REGULATORY TRANSITION ACT OF 1995 AND CLEAN AIR ACT REGULATIONS

Y 4. G 74/7: T 68/14

Regulatory Transition Act of 1995 a...

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

FEBRUARY 2, 1995

Printed for the use of the Committee on Government Reform and Oversight

DEPOSITORY

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CONTENTS

Page

Hearing held on February 2, 1995 1

Statement of:

Dunlop, Becky Norton, secretary of natural resources, Commonwealth of Virginia; Robert Martínez, secretary of transportation for the Commonwealth of Virginia; Robert Dix, member, board of supervisors, Fairfax County; and Lorraine Lavet, Fairfax County Chamber of Commerce 23

Laskowski, Stan, Deputy Regional Administrator, Region Three, Environmental Protection Agency; Ellen Bozman, vice chairman of the Arlington County board; and Sheryll Crosby, Shortness of Breath Club, American Lung Association 43

McGillicuddy, Robert, Auto Care, Inc.; Dennis Dwyer, Potomac Mills Exxon; and Ron Harrell, Capital Services, Inc 6

Letters, statements, etc., submitted for the record by:

Bozman, Ellen, vice chairman of the Arlington County board, prepared statement of 51

Collins, Hon. Cardiss, a Representative in Congress from the State of Illinois, prepared statement of 2

Crosby, Sheryll, Shortness of Breath Club, American Lung Association, prepared statement of 45

Davis, Hon. Thomas M., a Representative in Congress from the State of Virginia, prepared statement of 3

Dunlop, Becky Norton, secretary of natural resources, Commonwealth of Virginia, prepared statement of 26

Dwyer, Dennis, Potomac Mills Exxon, prepared statement of 15

Laskowski, Stan, Deputy Regional Administrator, Region Three, Environmental Protection Agency, prepared statement of 48

Lavet, Lorraine, Fairfax County Chamber of Commerce, prepared statement of 37

Martínez, Robert, secretary of transportation for the Commonwealth of Virginia, prepared statement of 31

McGillicuddy, Robert, Auto Care, Inc., prepared statement of 9

Moran, Hon. James P., a Representative in Congress from the State of Virginia, prepared statement of 53

Peterson, Hon. Collin C., a Representative in Congress from the State of Minnesota, prepared statement of 2

Spratt, Jr., Hon. John M., a Representative in Congress from the State of South Carolina, prepared statement of 52

REGULATORY TRANSITION ACT OF 1995 AND CLEAN AIR ACT REGULATIONS

THURSDAY, FEBRUARY 2, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Fairfax, VA.

The subcommittee met, pursuant to notice, at 8:45 a.m. in room 2 of the Fairfax County Government Center, Hon. David McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, Gutknecht, Davis, Peterson, and Moran.

Staff present: Mildred Webber, staff director; Jon Praed, chief counsel; Karen Barnes, professional staff member; David White, clerk; and David McMillen and Kevin Davis, minority professional staff.

Mr. MCINTOSH. The subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is convened to order. Thank you all for coming this morning.

This is our first field hearing of the subcommittee and we have planned, budget constraints allowing, to have as many of these as possible in order to hear testimony from American citizens and bring that to Washington, particularly in the area of regulations and ways in which we can streamline the regulatory system, improve the way Government operates in that area, and be more responsive to the citizens.

This morning we are on a tight schedule and so in order to give us the most time to hear from the witnesses, I am going to dispense with an opening statement and ask that my colleagues summarize theirs so that we can get right to the hearing. We have to leave here at about 10 o'clock in order to get back to vote on various matters before the full Congress.

So with that, thank you. Welcome, and I would introduce to you my ranking member, Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman. I appreciate you calling this hearing. I have an opening statement that I would like to, without objection, be made part of the record.

Mr. MCINTOSH. Seeing none, it will be done.

[The prepared statement of Hon. Collin C. Peterson follows:]

PREPARED STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. Chairman, I want to thank you for calling this hearing on H.R. 450, a bill to impose a six month moratorium on federal regulations. I believe that after our last hearing on this bill there was popular sentiment among members that further hearings would be important to thoroughly examine the impact of federal regulations and also the effects that a government-wide moratorium would have. I can think of a no more fitting way to continue our examination of this issue than to have this hearing among the people who are most affected by the regulations that the government promulgates.

Mr. Chairman, I share your concerns about the burdens that federal regulations have imposed on business and society. I believe that it is time that we consider the costs of regulations before we regulate.

I support common sense regulations designed to protect the health and safety of the American people, and I want to be assured that any moratorium does not compromise the health and safety of our citizens or place a greater burden on the American public.

I am aware of the controversy that has erupted in several states regarding compliance with rules enacted by the Environmental Protection Agency pursuant to the 1990 Clean Air Act Amendments. Nowhere has this issue been more prominent than in Northern Virginia where state legislative leaders and the EPA have yet to come to terms on the means of compliance with EPA rules.

I understand the EPA's desire to cleanup the air in Northern Virginia but I am also concerned for local business owners who may be squeezed out of offering inspection and maintenance service if the EPA rules are implemented. I also understand that in December of 1994, EPA Administrator Carol Browner sent a letter to all governors indicating the EPA's willingness to allow greater flexibility for state compliance. I understand that rules to that effect may be issues in the coming months (unless we suspend them under this bill).

I look forward to hearing today's testimony. Hopefully it will shed some light on how a moratorium may affect interested parties.

Thank you.

Mr. PETERSON. So I won't read it. And, also, I think Mrs. Collins and Mr. Waxman also have statements, so if there is no objection that they could be made part of the record. I look forward to the testimony.

Mr. MCINTOSH. Seeing no objection, they will be made part of the record.

[The prepared statement of Hon. Cardiss Collins follows:]

PREPARED STATEMENT OF HON. CARDISS COLLINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, I am pleased that we are holding this hearing today on H.R. 450, a bill that would impose a six month moratorium on federal agency rulemaking. Because of the breadth of this bill's impact I would advocate that we hold many more hearings. I firmly believe that we must be particularly thorough in our examination of any piece of legislation whose impact will be as sweeping as that of H.R. 450.

I am aware that EPA regulation under the Clean Air Act has been a very contentious issue in northern Virginia. As such I am certain that some participants in this hearing may see H.R. 450 as a panacea to government regulation.

However, we should not look at the implications of H.R. 450 narrowly. H.R. 450 has a much broader impact than the scope of this hearing suggests. We need to look beyond the Clean Air Act, to food safety, airline safety, child safety, and a number of other areas that would be adversely affected if this moratorium were imposed.

An article featured on the front page of the Wednesday February 1, 1995 edition of the Washington Post helps highlight this point. On Friday February 3, 1995 the U.S. Department of Agriculture ("USDA") plans to issue a proposal to modernize meat and poultry inspection. Under the proposal the USDA would require processing plants to conduct daily tests for salmonella and other bacteria, and to take steps to improve sanitation. The USDA proposal represents a drastic improvement from the current system, implemented in 1907, that simply calls for visual inspection of animal carcasses.

According to the USDA and the Center for Disease Control, salmonella poisoning is the cause of approximately 2 million cases of illness per year and approximately

1,920 deaths. In sum, nearly 5 million cases of illness and greater than 4,000 deaths are associated with meat and poultry products each year.

However, USDA's ability to move forward with this proposal will be undermined by the passage of H.R. 450. This bill would prevent the USDA from taking any action to implement important safeguards against foodborne illness. I do not believe that we should delay for one minute, much less six months, the implementation of regulations to reduce the number of deaths and illness that occur each year from food poisoning. Thank you.

Mr. MCINTOSH. Mr. Davis is a member of the full committee and with us here today. Thank you for joining us.

Mr. DAVIS. Thank you very much. And I will welcome everybody here to our spartan complex out here in Fairfax. I have a statement that I would put in the record. I just want to note out here in the front row we have three of my constituents representing the small service station operators across Virginia, and these small business owners will no doubt testify they are inundated by new Government rules and regulations and they can't afford a battery of lawyers and consultants to interpret all these rules.

They don't have the time or the money to appeal regulations that they can clearly see don't apply to them or simply don't make any sense. We're going to hear from them today and I thank them for being here and I would ask unanimous consent the rest of my statement be put in the record. Thank you.

Mr. MCINTOSH. Seeing no objection, it will be done.

[The prepared statement of Hon. Thomas M. Davis follows:]

PREPARED STATEMENT OF HON. THOMAS M. DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Thank you Mr. Chairman.

I would first like to thank the Chairman for calling this field hearing in my District. While my colleague from Indiana, David McIntosh, is a fellow freshman in the House of Representatives he has been a leader in regulatory reform dating back to his service in President Reagan's Justice Department and President Bush's White House.

I hope that by using Virginia's as an example, we can highlight the need for a six-month moratorium on government regulation and rule making as called for in the Regulatory Transition Act introduced by the Chairman and Mr. DeLay. I think this kind of moratorium would give us some breathing room from the flood of over 4000 rules and regulations issued by the federal government every year. It will give us a chance to actually take a look at what we are asking American business and the American public to deal with.

We have three of my constituents here today representing small service station operators across Virginia. These small business owners will, no doubt, testify that they are inundated by new government rules and regulations. They don't have a battery of lawyers and consultants to interpret these rules and regulations. They don't have the time or the money to appeal regulations that they can clearly see don't apply to them or simply don't make any sense. The vast majority of businessmen try to understand and obey these regulations—often resulting in outlandish expense to their business. Some just ignore the flood of regulations and hope for the best. A few, faced with mounting cost, dump a material illegally or falsify records, so that they give the appearance of compliance. I believe this onslaught of regulations is forcing more and more businessmen who would like to do the right thing into these last two categories.

That is why I am happy to see Virginia taking such aggressive action to resist EPA's implementation of centralized auto emissions testing. This EPA-mandated program would force the Commonwealth to set up an expensive and complicated set of centralized testing centers all over the State. In addition, this regulation would require Virginia to set up a new bureaucracy to monitor and operate these new stations.

Virginia citizens have in the past been able to get auto emissions testing done when they went in to get their Virginia safety inspections. It is an emissions testing program that is comfortable and convenient for most Virginians. The system EPA

would impose on the State requires Virginians go to one of a handful of large central location for emissions testing rather than their neighborhood service station.

Virginians are willing to go to a new, more costly, less convenient testing program to achieve cleaner air. But, that's the rub, if Virginia is going to go to these lengths, we should get cleaner air in return. My concern, based on the research I have done, is that implementing this new auto emissions system will have little real, scientifically measurable affect on the region's air quality. If we don't get cleaner air—why are we spending money that Virginia doesn't have, to develop a system that leads to long lines and angry citizens. And I have to add, having spent the last two weeks working to pass the Unfunded Mandates Bill, that the Federal government is providing no funds to the states to implement this costly EPA-mandated program.

I hope, that through this hearing, we can get a clearer picture of what this regulation was intended to do and the affect it is actually having. I think the testimony provided here will highlight exactly why we need to pass the Regulatory Transition Act.

Mr. Chairman, I look forward to the testimony, and I again thank you for calling this hearing.

Mr. MCINTOSH. And I would also like to introduce a colleague who is a member of the full committee and with us here today, Congressman Jim Moran.

Mr. MORAN. Thank you, David. I appreciate your having this hearing and applaud the two new members of this committee to have taken on this issue immediately. We have been working on it for some time and it has been a source of great frustration. And I can say that for both the Democrats and the Republicans in the Virginia delegation.

But this is the subcommittee that should be looking into the implementation of the Clean Air Act Amendments on how it affects the governments and small businesses. I am going to say a few things about it just to tell you where I am and the fact that it's coming from a Democrat who supports the administration a lot of things that it might have some more weight. I'm not sure.

But we know the Clean Air Act was passed in 1990, but it did not include prescriptive remedies about how to achieve the reduction in the air pollution. It left it to the EPA to formulate the rules but to achieve reduction targets that Congress set. So the structure of the bill was not the problem. In fact, the legislation itself directed the Environmental Protection Agency to choose regulations which were least burdensome to the States and, ultimately, to the consumer, of course. That was our interest and we assumed that the EPA—in fact, I wasn't in the Congress when it was first passed, but the Congress assumed that the States would bear in mind the interests of the consumer and, obviously, the Environmental Protection Agency would.

But now 5 years later, Virginia is one of eight States that is balking at the price tag and the inconvenience of EPA's regulations because, in fact, EPA chose a cookie cutter approach to implementing this law. And, in fact, they got so specific as to mandate a costly $110,000 testing device called the I/M 240.

This is a device that, in fact, we found that in a number of test cases it was failing 25 percent of the time. And I have the specific figures, but the automobile would then return, be tested by the same machine, and pass. The interesting thing about it was that the owner of the automobile never changed anything about the automobile.

So to assume this I/M 240 that costs $110,000 is a reliable enough instrument that EPA should dictate it be used nationwide

I think runs against a whole lot of empirical information that it is not that reliable. And EPA is insisting that we set up a centralized bureaucratic system, which again seems to run counter with not only the way the Government is going, but also the original intent of the legislation.

Three draft plans have been submitted by the State, three quick rejections by EPA. The State is now faced with the threat of cutting off highway funds. Obviously, we don't want that sledgehammer approach to be imposed upon the State, but Governor Allen has filed suit. It is pending in U.S. District Court.

It challenged EPA's authority to force at least this State to comply with the costly mandatory rules. And we have been working for months with EPA through the congressional delegation and with the State and yet we are no closer to a common solution.

So that is why a hearing like this is so important. We are still supposed to reduce our volatile organic compounds by 15 percent, which means 60 tons per day in Virginia.

The day before yesterday, and I know my colleagues are familiar with this, and certainly Mr. Davis who was a cosponsor of the original legislation on unfunded mandates, the majority side accepted an amendment that I offered that said that the executive branch has to choose the least burdensome method of complying with the original intent of the legislation. And so the Congress accepted that almost by unanimous consent.

Well, had that been operable, we would never have been in this situation. If EPA had sought out the least burdensome method of implementing the intent of the legislation, we could have suggested a whole number of ways to achieve that and everybody would be happy and our air would be a lot cleaner.

Ultimately, we are looking for the most consumer-friendly approach and now I see that the Administrator of EPA has told the Governors that she agrees also that that ought to be our objective, but we don't see the movement as yet.

So I will hope that this will be one further step in reaching some agreement on a terribly important issue. We are going to get into all the problems that it has posed, but one thing I want to emphasize, and then I am going to conclude, is that even the testing point, the baseline data that EPA used to determine whether Virginia is in compliance, which was in 1988, that was an aberration.

That was the worst year we had for smog and pollution. We weren't getting any wind, there was a hot summer, and it was not typical. And, in fact, we have not implemented any of these regulations as yet and yet I see that our ability to achieve these standards has substantially improved.

And the reason it has improved is because we have gotten back to more normal periods of air quality away from that abnormal 1988 period that EPA is still using as a baseline. So somehow we're coming into—we're making terrific progress on compliance and we're not doing a thing.

So this is a classic example of what can go wrong with the implementation of laws that have good intent—we all want clean air. The issue is how we achieve it and how we empower the States and localities to work with us to achieve it in the most cost-efficient and consumer-friendly manner.

So I'm sorry for such a long statement, Mr. Chairman, but now I vented from all the years we've been working on it.

Mr. MCINTOSH. Those are welcome words.

Mr. MORAN. And I am anxious to hear from the experts. Again, I want to underscore the fact that I appreciate the initiative you have taken and Mr. Davis, the former chairman of our largest county in Fairfax.

Mr. MCINTOSH. Thank you very much. Let me, before we call the first panel together let me just put it into context. There are two pieces of legislation that this subcommittee will be considering next week. Your testimony will be very important for us.

One is H.R. 450, that puts a moratorium on regulations that is very temporary but says let's put a pause or what we are doing at the Federal level to rethink the way we write regulations so that we can apply many of the standards that Mr. Moran talked about in developing those, particularly a mandate that the Government seek the least costly alternative where possible.

The other is H.R. 9, which has many of the changes to the regulatory system. I was particularly pleased to see that President Clinton in his State of the Union address endorsed the notion that we have to bring the regulatory system into the modern era and update the way we write regulations so that we are not imposing unnecessary burdens on the private sector, on cities, and ultimately taxing the middle class in an enormous regulatory overkill.

So those are two pieces of legislation that will be coming up. Your testimony will be very helpful to us as we consider those next week.

Let me turn now to our first panel. Welcome, and I appreciate your input as citizens in particular. The panel has three gentlemen from here in Fairfax County: Mr. Robert McGillicuddy, who is with Auto Care, Inc.; Mr. Dennis Dwyer with Potomac Mills Exxon; and Mr. Ron Harrell with Capital Services, Inc.

Mr. McGillicuddy, if you could lead off. And what I think we will do is hear statements from each of the witnesses and then have questions to the entire panel.

STATEMENTS OF ROBERT McGILLICUDDY, AUTO CARE, INC.; DENNIS DWYER, POTOMAC MILLS EXXON; AND RON HARRELL, CAPITAL SERVICES, INC.

Mr. MCGILLICUDDY. Good morning, Mr. Chairman and members of the committee. My name is Bill McGillicuddy and I am a small businessman in Northern Virginia in the automobile repair business and a licensed emission inspection operator.

As Congressman Davis stated earlier, the current predicament in which EPA has placed the State of Virginia regarding the automobile emissions inspection program is an outstanding example of the need for regulatory reform and the importance of the moratorium which is called for in H.R. 450.

The Clean Air Act Amendments of 1990 required EPA to issue guidance on the issue of enhancements which can be made to the existing motor vehicle inspection programs. This guidance was mandated and was to have been issued in November 1991.

Rather than issue the guidance whose requirements are spelled out in the Clean Air Act, EPA missed the deadline by over 1 year

and then proceeded to issue not guidance but a binding rulemaking that mandates a system known as the I/M 240.

This test is the baby of a number of EPA bureaucrats who incredibly claim that Congress mandated this system in 1990, even though the system was unheard of at that time. It uses equipment that is solely manufactured in Japan and, as Congressman Moran pointed out earlier, this equipment costs from $150,000 to $300,000 per test lane. The EPA has refused to consider alternative tests which use American made equipment at one-tenth of the cost and to give them credit on an equal basis.

EPA is also requiring that the test be run by the Government or a contractor to the Government in a centralized test-only environment. EPA's actions fly in the face of the plain language of the 1990 Clean Air Act Amendments, which require States to be given maximum flexibility to design fair, reasonable and convenient programs for the affected consumers.

If allowed to stand, EPA's mandate will have a very serious negative impact on Virginia's small businesses and its citizens. It will cost the loss of hundreds of jobs for those inspectors currently operating the emissions program in the State of Virginia. The number of jobs lost could easily double as the rippling effect of lower revenues impact those businesses.

There is also significant economic loss associated with the consumer inconvenience that has been alluded to over and over again but a factor that EPA continues to ignore.

The inspection and maintenance issue is a textbook example of how entrenched unaccountable bureaucrats can use the regulatory process to implement their own agendas at the expense of small business and the American public.

In this case, bureaucratic excesses have been exposed only because the impact of their actions have affected not only industry and small business, but intruded into the lives of every citizen who drives a car, even in lightly populated areas of the country. This is an example of a bureaucracy inventing a program and taking every possible step to force local governments to implement their program even though the more effective, consumer-friendly programs exist.

In 1993 EPA officials spent much time at taxpayers' expense, I might add, in Richmond threatening the Commonwealth that they would personally see to it that highway fund sanctions were applied immediately if the Commonwealth did not buckle under and adopt EPA's star wars I/M 240 system, a system, which I might add, was suspended within a matter of hours of its attempted implementation in the State of Maryland just a month ago today.

In an effort to discredit the existing Virginia emissions program, these same EPA officials went so far as to make slanderous statements against local small businessmen and women impugning their integrity. It was so distasteful that the former administration, the Wilder administration, which was sympathetic to the desires of the EPA had to apologize for the remarks of these EPA officials.

In addition to the threats and slander, the other tactic used by EPA in Virginia was to blame it on Congress. EPA made the incredible claim that Congress in 1990, which had never heard of the I/M 240, had somehow mandated that system.

The reason that EPA has resorted to such slander and threats is that EPA's staff is wedded to the I/M 240, the system that they invented, and has demonstrated by the fiascos which were first reported in Vancouver, BC, when the identical system was implemented many years ago, was a disaster. More recently, in Maine and Maryland, they know that their system would never, ever be adopted on its own merits.

The simple fact of the matter is that testing done through November 1994 of alternative systems in the State of California have shown that greater pollution reduction benefits can be obtained using test equipment costing a fraction of the EPA mandated system.

As a result of the mounting public opposition which shut down or delayed the implementation of I/M 240 in Maine, Maryland, Texas, Pennsylvania and elsewhere, EPA recently announced—Congressman Moran mentioned it—that they would work with the States and give them flexibility. That is ironic because that is actually what Congress had mandated when the Clean Air Act Amendments were passed.

However, the recent announcements appear to be a smoke screen designed to stall the congressional action of committees like this and to ride out the wave of opposition from States and citizens who are now outraged by the one-size-fits-all EPA mandates.

While EPA sent out flexibility guidelines on December 29th of this year, of last year, on December 30th, the next day, the Administrator Nichols wrote to the State of California saying that the EPA would not reconsider the 50 percent emission reduction credit for decentralized systems. The 50 percent emissions credit is a major premise of the EPA program and it is inaccurate and false.

Before the House Commerce Committee in 1993, the GAO testified that the evidence did not support EPA's conclusions and, furthermore, that EPA's assumptions that centralized test-only Government run systems are perfect and problem-free, in fact, produced improper testing in anywhere from 29 to 40 percent of those cars tested.

In spite of these findings, the EPA staff has loaded the dice by assuming such systems yield no improper testing, yet heavily penalize convenient decentralized systems which better test in the real world than the EPA staff mandated system.

While many other instances of inaccurate or misleading information can be cited, the key question is where do we go from here to insure that these abuses will not occur in the future. I think that an essential part of any regulatory reform would be that regulations must be subjected to an economic analysis done by an arm of the Government other than the agency writing the regulations. In this case, the economic analysis was performed by EPA staffers who, in fact, contrived the I/M 240 system.

While EPA inventors claim it is the most cost-effective air pollution reduction program available, analysis by States and independent think tanks tell a different story. Economic analysis must account for consumer inconvenience costs, a factor that EPA has preferred to ignore.

I think one bill that I am familiar with, Congressman Gekas' bill, addresses some of the specifics of the motor vehicle inspection and

maintenance issue and should be included, I think, in any regulatory reform bill.

Thank you for the opportunity to appear here today, and if I can answer any questions I will be happy to do so.

[The prepared statement of Mr. McGillicuddy follows:]

PREPARED STATEMENT OF ROBERT MCGILLICUDDY, AUTO CARE, INC.

Good morning Mr. Chairman, members of the committee. My name is Bill McGillicuddy and I am a small businessman in Northern Virginia in the automobile repair business, and a licensed emission inspection operator.

As Congressman Davis has stated, the current predicament in which EPA has placed the State of Virginia, regarding automobile inspections, is an outstanding example of the need for regulatory reform and the importance of the moratorium called for in H.R. 450.

The Clean Air Act Amendments of 1990 required EPA to issue guidance on the issue of enhancements which can be made to existing motor vehicle emission inspection programs. This guidance was mandated to have been issued in November 1991.

Rather than issue the guidance, whose requirements are spelled out in the Clean Air Act, EPA missed the deadline by over one year, and then proceeded to issue not guidance, but a binding rulemaking that mandates a system known as I/M–240. This test is the baby of a number of EPA bureaucrats, who incredibly claim that Congress mandated their system in 1990, even though the system was unheard of at that time. It uses equipment solely manufactured in Japan.

This equipment costs from $150,000 to $300,000 per test lane, and EPA has refused to consider alternative tests which use American-made equipment at one-tenth the cost, on an equal basis.

EPA is also requiring that the test be run by the government, or a contractor to the government, in a centralized test-only environment.

EPA's actions fly in the face of the plain language of the 1990 Clean Air Act Amendments, which requires states be given maximum flexibility to design fair, reasonable, and convenient programs for the affected consumer.

If allowed to stand, EPA's mandate will have a very serious negative impact on Virginia's small businesses and its citizens. It will cause the loss of hundreds of jobs for those inspectors currently operating the program in Virginia. The number of jobs lost could easily double as the rippling effect of lower revenues impacts those businesses. There is also significant economic loss associated with the consumer inconvenience—a factor that EPA prefers to ignore.

The Inspection and Maintenance issue is a text-book example of how entrenched unaccountable bureaucrats can use the regulatory process to implement their own agendas at the expense of small business and the American public.

In this case, bureaucratic excesses have been exposed only because the impact of their actions effected not only industry and small business but intruded into the lives of every citizen who drives a car—even in lightly populated areas of the Country.

This is a classic example of a bureaucracy inventing a program and taking every possible step to force local governments to implement their program even though more effective consumer-friendly programs exist.

In 1993, EPA officials spent much time—at taxpayer expense—in Richmond, threatening the Commonwealth that they would personally see to it that highway fund sanctions were applied immediately if the Commonwealth did not buckle under and adopt EPA's "Star Wars" I/M–240 System—a system which, I might add, was suspended within a matter of hours of its attempted implementation by the State of Maryland just one month ago.

In an effort to discredit the existing VA emissions program, these same EPA officials went so far as to make slanderous statements against local small businessmen, and women, impugning their integrity. It was so distasteful that the previous Wilder administration—which was sympathetic to EPA's views—had to apologize for such remarks.

In addition to threats and slander, the other tactic used by EPA in Virginia was to "blame it on Congress." EPA made the incredible claim that the Congress in 1990—which had never even heard of I/M–240 had somehow mandated that system.

The reason EPA has resorted to such slander and threats is that EPA staff is wedded to the I/M–240 systems they invented. And as demonstrated by the fiascos which were encountered first in Vancouver, and more recently in Maine and Maryland, they know their system would never be adopted on its own merits.

The simple fact of the matter is that testing done through November 1994 of alternative systems in the State of California has shown that greater population reduction benefits can be obtained using test equipment costing a fraction of the EPA-mandated system.

As a result of mounting public opposition which shut down or delayed I/M–240 systems in Maine, Maryland, Texas, Pennsylvania and elsewhere, EPA recently announced it would work with the states and give them flexibility—which, ironically, is actually what Congress had mandated before EPA staff took over.

However, the recent announcements appear to be a smokescreen designed to stall Congressional action and ride out the wave of opposition from states and citizens who are now outraged by the "one-size-fits-all" EPA mandates.

While EPA sent out "flexibility guidelines" on December 29th, on December 30th Air Administrator Mary Nichols wrote to the State of California saying that EPA would not reconsider the 50% emission reduction credit for decentralized systems.

The 50% emissions credit is a major premise in the EPA program and it is inaccurate and false. Before the House Commerce Committee on October 29, 1993, the GAO testified that the evidence did not support EPA's conclusions and, furthermore, that EPA's assumptions that centralized government-run systems are "perfect and problem-free," in fact produced improper testing in 29% to 40% of the cases.

In spite of these findings, EPA staff loaded the dice by assuming such systems yield no improper testing, yet heavily penalize convenient decentralized systems which test better in the real world than the EPA staff-mandate system.

While many other instances of inaccurate or misleading information can be cited, the key question is . . . "Where do we go from here to insure such abuses will not occur in the future?" I think an essential part of any reform legislation is that regulations must be subjected to economic analysis done by an arm of the government other than the agency writing the regulations. In this case, the economic analysis was performed by the same staffers who contrived the I/M–240 system.

While EPA inventors claim it is the most cost-effective air pollution reduction program available, analysis by states and independent "think tanks" tells a different story. Economic analysis must account for consumer inconvenience costs—a factor EPA prefers to ignore despite EPA's claim their system is "the most consumer-friendly system we have ever designed."

The Bill introduced by Congressman George Gekas that addresses the specifics of the Motor Vehicle Inspection and Maintenance issue should be included as part of any regulatory reform Bill.

Thank you for this opportunity to appear before this Committee. At this time I am happy to answer any questions you might have.

Mr. MCINTOSH. Thank you very much, Mr. McGillicuddy. One thing that I think we may do for the convenience of the witnesses is one of the staffers, Karen, will, if I could ask her to just raise a card when we have reached the 4-minute mark, and if you could keep the statements to about 5 minutes that will be helpful.

Normally, in Washington we've got these little lights that go off to indicate when time has expired. And, Karen, just watch for her, and I appreciate that. But if you've got more to say today, I definitely want to give the chance for people who are not from the Government to be fully heard so feel free to take your time and tell us what it is you think we need to know.

Mr. Harrell, do you want to go second?

Mr. HARRELL. Thank you. My name is Ron Harrell. I am a Mobil Oil dealer here in Fairfax County. I've been in the business for a long time. I've been in the emissions inspection program since its inception in 1981. I don't have a prepared statement but I would like to make a few comments following up on what Bill had to say and, particularly, with what Congressman Moran had to bring forth earlier.

Over a period of 3 years, we have been working with the State government and at some times trying to work with EPA to bring about a program in Virginia to build upon the program that we al-

ready have in place and a program that has proven over the years to be a very good one, a decentralized test and repair program.

Over the past year or so, we have been invited to work by Congressman Moran with EPA to try and adapt a program that would provide maximum customer convenience and do the job of cleaning up the air in our area.

Through the good graces of the Congressman, we had meetings with the people from EPA, and I again would reflect the Congressman's comments that where we thought we had a proposal in front of EPA that made some sense to both parties involved, they were rejected out of hand.

So I think that if we had had the opportunity 3 years ago to appear before this committee and to have this type of atmosphere from the Congress to then put the impact at EPA's doorstep to listen to what reasonable, and there were many reasonable programs out there in the country and they are already in place, to look at what's there to let the individual jurisdictions, the States, implement the programs and improve upon them.

And I think all we were trying to impress through the Congressman's office to EPA was to give the States some flexibility. Let them have the opportunity to put in place a plan that made sense, give that plan a chance to prove itself.

After all, we're not dealing with the air quality problems as they have in California. We are dealing with the air quality problems in Northern Virginia, a far different situation. Give that program a chance to prove itself and then test the program at the end of that period of time to see what improvements we had to make.

That is all we were trying to do with EPA. We've been trying to do that for 3 years. At this point we have had little or no cooperation and, of course, that ultimate sledgehammer, removing Federal highway dollars, is always hanging out there.

Please, if you can take a message back, remove the sledgehammer and give us an opportunity to work with EPA with a flexible program. And we're willing to work if they are only willing to listen.

Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Harrell. Mr. Dwyer.

Mr. DWYER. Members of Congress and the committee, I also greatly appreciate the opportunity to state my thoughts publicly on this quintessential U.S. EPA boondoggle, the I/M 240 centralized emissions test program.

The EPA has truly created for itself and the public in this matter the mother of all no-win programs and in doing so it has stepped over the boundaries of its authority in addition to stepping over all boundaries of decency and respectability in its dealings with the public as well as with the individual States of these United States.

It began for me over a decade ago when the EPA, angry that Virginia didn't buckle under to its demand for centralized program at the inception of the emission testing area, began belying the Virginia program at the very beginning and accused us of cheating by not flunking enough cars.

The EPA never, I repeat never, came into the State and worked with us to determine the truth, which was that the affluent Northern Virginia region had newer cars, better mechanics, and better

tools than was typical throughout the country as a whole. The EPA did not care what the truth was, having already made up its bureaucratic mind that a centralized test-only program using a yet-to-be developed star wars piece of equipment was what was good for America.

The EPA was willing to save the country in spite of the State's recalcitrance and if it took machiavellian end justifies the means methods to accomplish it, well, so be it.

Shortly before the Virginia Department of State Police relinquished its oversight of the emission testing program, the Virginia Air Pollution Control Board precursors of the DEQ, it did a comprehensive study of the program and determined it was among the best in the country. EPA deep-sixed the study because it did not support the EPA's position.

With the EPA pulling the strings, the Virginia Air Quality Control Board instituted a mean-spirited covert inspection program that was designed to intimidate an emission inspection station into relinquishing their rights to a fair hearing on situations that covert inspectors deemed as program violations.

This was accomplished by lumping in some cases such inconsequential occurrences as transposing two numbers on the 15-digit automobile VIN number, a $3,000 fine by itself, and astronomical fines of $15,000 to $20,000 range and offering to reduce them to one-twentieth the size if the emission owner would sign a document admitting without review their inspectors committed violations.

Frankly, the program did improve somewhat rather quickly, but remember it was already a good program, notwithstanding an EPA study subsequent to the State police study which found serious flaws in the Virginia program. No surprise there.

Please excuse my bias borne of close-up and prolonged exposure to them, but there are precious few things in this world less credible than an EPA study that supports an EPA position.

Armed with the data from the covert program, armed with the threats of withholding a billion and a half dollars of Federal highway moneys, armed with an assortment of other tricks and threats, and accompanied by an army of centralized contractor lobbyists, the EPA descended on the Virginia General Assembly a couple of years ago and there demonstrated a textbook case in study of a Federal Government agency run amok.

In Virginia the EPA accused the people of our industry in public testimony of dishonesty, not human fallibility, but dishonesty, in 85 percent of the testing we perform. That is an outrageous, unsubstantiated accusation. Transposing two numbers of a long VIN number is not an example of dishonesty.

I have here faxes, which I'm not going to refer to in the timeframe, that I have received from different parts of the country and from many sources telling the story of people fighting and winning the battle of this unfair EPA encroachment on their lives and their businesses.

This stack represents the last 6 weeks or so that I have received. A few minutes is not adequate to say all that I can say about their content, but I am truly grateful of the opportunity to say what I can say in the timeframe I do have.

But since I can't go into detail in this forum on the content of these communications nor on the detail on the much larger pile of faxes and documents I have in my office on this issue, I will be content with giving an overview of the story they tell.

They tell the story of an I/M 240 machine that began and remains a contraption, a badly flawed piece of equipment, indeed, a badly flawed concept. It makes the concept of a fully automated baggage handling system at the yet unopened a year behind schedule delayed cost of $500,000 a day Denver airport seem like a well thought out idea.

I wasn't aware of 4 minutes and I would appreciate taking some time to finish the statement. This is all I've got left.

Mr. MCINTOSH. Go ahead, Mr. Dwyer.

Mr. DWYER. Thank you very much. I can't see that far. They tell the story that the I/M 240 is too expensive, it takes up too much room, it lacks the one essential quality that a testing machine must have; repeatability. A good piece of test equipment must be able to get the same results for similar conditions time and time again, something the I/M 240 can not seem to do.

They tell the story of an I/M 240 that is virtually impossible to keep calibrated. One equipment manufacturer claims off the record, off the record because he fears EPA retribution, the I/M 240 uses to compare its equipment against cost $1,500 a month in calibration gas alone.

Does anyone think that a for-profit centralized contractor will spend that kind of money on cal gas—forget the down time or the manpower—in order to get consistent, accurate testing results? That is assuming the I/M 240 is ever capable of doing accurate and consistent testing.

In the few places where the program has gotten to the startup stages and after advertising that their high-tech approach to emissions testing was superior to what certified mechanics in the marketplace can provide, contractors proceeded to hire minimum wage inexperienced people to man the equipment.

These documents tell a story of an EPA which has advocated a system which could test the documentation that condemns the I/M 240 by virtue of its tactic of hiding the development process of the I/M 240 from the public, from their peer industry, and with the exception of a select few, from the equipment manufacturers who will provide the after-market with the tools they will need to do the emission repairs of the future.

They tell the story of some of the I/M 240 programs that actually begun long lines and chaos and then being forced to shut down because they were unworkable. They tell the story that makes regaining credibility on the issue a near impossibility for the U.S. EPA, and that is tragic given the monumental importance of the oversight responsibility with which the EPA is charged: cleaning the air we breathe.

These materials suggest a story of a small cadre of people, a very small cadre, Government insiders and private industry plotting with high Government officials to create a benefit from a new billion dollar industry, an industry in which regulations issued by the same Government officials which seem to lock out all competition, most competition.

They tell the story of wealth gained on stock speculation in this newly created industry; the story of lobbying excesses at every turn and every State legislature where the EPA designed to impose its I/M 240 program; a story of entertaining a Governor on a Caribbean island to get sole contract rights in the Governor's State, a successful effort, it seems, and one which would entail awarding a contract awarded to another company, a lower bidder yet, and reported by a newspaper in that State a whole lot of money changed hands between the companies involved.

And they tell a story of the use of large donations to nonprofit associations to deceive the public believing what was good for the contractor was good for the public. A story of one State director such an association that blew the whistle on a contractor for attempting to use the good name of his association by portraying that association as the sponsor of a million dollar campaign to advertise the contractor's services.

A story of a public official who deceived the State that pays his salary and then takes a lucrative job with the company that got the contract he made possible by his perceived duplicity. The good news in this story is that the State suspended the contract with the company.

These documents suggest a story of a large multinational corporation with worldwide designs on dominating not just emission testing but also auto repairs. Let this I/M 240 program in Virginia mark my words: in a few years there will be very few business by comparison to today's numbers who will be in the automobile repair business in this State.

I have in my hand here a list of the businesses in the State of Virginia alone, over 6,000 of them that do auto repairs. These business owners comprise a billion dollar industry in this State and a hundred billion dollar industry nationwide. The EPA test-only I/M 240 program could have a catastrophic impact on this industry and the EPA has no concern about the possible consequences of its draconian program.

These people provide Virginia citizens with over 6,000 choices of where to get their cars repaired and those sheer numbers insure a competitive marketplace. The business owners and the tens of thousands of people who work in them are the citizens of the Commonwealth.

These are the people who are the parents of our children. They belong to our churches, they belong to service groups, they coach our little league and our youth sports programs, they do other volunteer work. These are the people the civil servants across the river are supposed to be serving, but that is not what's happening here.

That basically concludes my comments. For joining the fight and stopping this terrible program and the EPA from being imposed, I want to thank all the members of certainly this committee and of all our Congressional delegation.

I wish to thank all—I certainly wish to thank our courageous Governor, George Allen, and Secretary Dunlop and her staff for their efforts, all members of the Virginia General Assembly who had the guts to stand up to the EPA, Supervisor Bob Dix. And, well, all I can say is God bless Senator Warner who championed

our fight in the General Assembly for the people of Northern Virginia.

Thank you very much.

[The prepared statement of Mr. Dwyer follows:]

PREPARED STATEMENT OF DENNIS DWYER, POTOMAC MILLS EXXON

I greatly appreciate the opportunity to state my thoughts publicly on a quintessential USEPA boondoggle—the I/M 240 Centralized Test only Emissions Programs.

The EPA has truly created for itself and the public in this matter the mother of all no win government programs—and in doing so it has over stepped the boundaries of its authority, in addition to overstepping all boundaries of decency and respectability in its dealings with the public as well as with the individual states of these United States

It began for me over a decade ago when the EPA—angry that Va. had not buckled under to its demand for a centralized program at the inception of the emission testing era—began maligning the Va. program from the very beginning. They accused us of cheating by not flunking enough cars. The EPA never—I repeat—never came into the state and worked with inspection stations to determine the truth—which was that the affluent No. Va. region had newer cars, better mechanics, and better tools than was typical throughout the country as a whole.

They just kept on browbeating the Va. State Police on No. Virginia's comparatively low failure rate. The EPA did not care what the truth was—having already made up its mind that a centralized test only program using a—yet to be developed stars wars piece of equipment to perform the test—was what was good for America. And if it took machiavellian "end justifies the means" methods to accomplish it's plan well . . . so be it.

Shortly before the Va. Department of State Police relinquished its oversight of the emission testing program to the Va. Air Pollution Control Board—a precursor of the current DEQ—it did a comprehensive study of the program and determined it was among the best in the country. But I am told the EPA deep sixed the study because it did not support the EPA's position.

With the EPA calling the shots, the Va. AQCB instituted a mean spirited covert inspection program that was designed to intimidate emission station owners into relinquishing their rights to a fair hearing on situations that the covert inspectors deemed as program violations.

This was accomplished by lumping in some cases such inconsequential occurrences as transposing 2 numbers on the 15 digit automobile VIN number—a $3000 fine by itself—into astronomical fines in the $15 to 20,000 range, and offering to reduce them to ½o the size if the emissions station owner would sign a document admitting—without review—their inspector committed violations.

Frankly the program did improve somewhat rather quickly but remember it already was a good program—not withstanding an CPA study subsequent to the state police study—which found serious flaws in the Va. program—no surprise there. Please excuse my bias born of close up and prolonged exposure to them, but there are precious few things under the sun less creditable than an EPA controlled study that supports a previously held EPA position.

Armed with the data from the covert program, armed with the threat of withholding a billion and a half dollars of federal highway moneys, armed with an assortment of other threats and tricks, and accompanied by an army of centralized contractor lobbyists, the EPA descended on the Va. General Assembly a couple of years ago; and there it demonstrated a text book case in study of the a federal government agency run amok in a state's domain.

In Richmond, the EPA accused the people of our industry—of dishonesty—not human fallibility—but dishonesty in 85% of the testing we performed—that's an outrageous unsubstantiated accusation transposing two numbers of a long VIN number is not an, example of dishonesty. Fraud has simply not been a problem in Virginia.

I have here faxes that I have received from different parts of the country, and from many sources telling the story of people fighting—and winning this unfair EPA encroachment on their lives and their businesses.

This stacks represents the last six weeks or so that I have received—a few minutes in not adequate to say all I would like to say about their contents, but I truly am grateful for opportunity to say what I can in the time frame I do have.

And since I can't go into detail in this forum on the content of these communications, nor into detail on the much larger pile of faxes and documents I have in my office on this issue, I will be content with giving an over view of the story they tell.

They tell the story of an I/M 240 machine that began as, and remains a Rube Goldberg contraption—a badly flawed piece of equipment—indeed a badly flawed concept. It makes the concept of a fully automated baggage handling system at the (yet to be opened—a year behind schedule—at a delay cost of $500,000, a day) Denver airport, seem like a well thought out idea.

They tell the story of an I/M 240 that is too expensive—it takes up too much room—it lacks the one essential quality that a testing machine must have—repeatability—a good piece of test equipment must be able to get the same results for similar conditions time and time again—something the I/M 240 can not seem to do.

They tell the story of an I/M 240 that is virtually impossible to keep calibrated. One equipment manufacturer claims off the record—off the record because it fears EPA retribution—that the I/M 240 it uses to compare against the results of it's own equipment (under development) cost $1500/month in calibration gas alone. Does anyone think that a for profit centralized contractor will spend that kind of money on cal gas—forget the downtime and the manpower needed to do proper maintenance—in order to get consistent, accurate test results? That is assuming the I/M 240 is ever capable of doing accurate and consistent testing.

And in the few places where the program had gotten to the startup stages, and after advertising that their high tech approach to emission testing was superior to what certified mechanics in the marketplace can provide, the contractors proceeded to advertise for and hire minimum wage inexperienced people to man the equipment.

They tell the story of an EPA which has abdicated its right to contest the documentation that condemns the I/M 240, by virtue of its tactic of hiding the development process on the I/M 240 from the public, from the repair industry, and—with the exception of a select few—from the equipment manufacturers who will provide the after market with the tools they will need to do the emission repairs of the future.

They tell the story of the I/M 240 programs that have actually begun, and have been forced to shut down because they were unworkable.

They tell a story that makes regaining creditability on the issue a near impossibility for the USEPA—and that is tragic given the monumental importance of the oversight responsibility with which the EPA is charged cleaning the air we breathe.

These materials suggest a story of a small cabal of people—a very small cabal of people—government insiders in private industry scheming with high government officials to create and benefit from a new billion dollar industry—an industry in which regulations issued by these same government officials would seem to lock out most all competition.

They suggest a story of wealth gained on stock speculation in this newly created industry—a story of lobbying excesses at every turn in every state legislature where the EPA designed to impose its I/M 240 program—a story of entertaining a governor on a Caribbean island to get sole contract rights in the governor's state—a successful effort it seems, and one which entailed voiding a contract already awarded to another company—a lower bidder yet!—and as reported by a newspaper in that state, a whole lot of money changing hands between the companies involved in this seedy affair—they tell a story of the use of large donations to non-profit associations to deceive the public into believing what is good for the contractor is good for the public—a story of one state director of such an association who blew the whistle on a contractor for attempting to use good name of his association by portraying that association as the sponsor of a million dollar campaign to advertise the contractors services—a story of a public official who it seems deceived the state that pays his salary, and then takes a lucrative job with the company which got the contract he made possible by his perceived duplicity—the good news in this story is that the state suspended the contract with the company.

These documents suggest a story of a large multinational corporation with world wide designs on dominating, not just emissions testing, but also auto repairs, and auto technician training. [Let this I/M 240 program into Va. and mark my words, in a few years there will be very few businesses by comparison to today's numbers who will be in the auto repair business in this state].

I have in my hand a list of the businesses in the state of Virginia alone—over 6000 of them that do auto repairs. These business owners comprise a billion dollar industry in this state—its over a $100 billion industry nationwide. The EPA centralized test only I/M 240 program could have a catastrophic impact on this industry, and the EPA seems to have no concern about the possible economic consequences of its draconian program.

These businesses provide Va. citizens with over 6000 choices of where to get their cars repaired; and those sheer numbers insure a competitive marketplace. The busi-

ness owners, the tens of thousands of people who work in them, and the people they serve are citizens of the Commonwealth. They are the people who earn and spend money in the state; these are the people who belong to our churches, who belong to the service clubs, who coach our youth in sports programs, and do other volunteer work—these are the people that the "civil servants" across the river are supposed to be serving—but that is not what is happening here!

For joining the fight to stop this terrible program of the EPA from being imposed on the people of Virginia, I wish to thank all the members of our congressional delegation for their efforts. I certainly want to thank our courageous Governor, George Allen, and Secretary Dunlop for their efforts, and all members of the Va. General Assembly who have had the guts to stand up to EPA, also Supervisor Bob Dix, and well . . . all I can say is . . . "God bless Senator Warren Barry" who championed this fight in the General Assembly for the people of No. Va.

In closing I wish to state that if reason prevails in this issue no state in the union will be required to use anything beyond the highly efficient and accurate BAR90 analyzer—at least not until adequate evidence is demonstrated that the inclusion of a dynamometer in the process will give sufficient benefits to offset the enormous downside that the mandatory inclusion of its use in emission testing programs will precipitate. The dyno component can be retrofitted if and when its benefits can be demonstrated in a fair and publicly varifiable testing program.

In the meantime, the ill effects of the dyno should be avoided—those malefactors include a dramatic reduction in the number of businesses which will be able to participate in such an emissions testing and repair program; it will make finding a good repair shop harder for consumers; it will cause repair costs to soar far beyond what is necessary; and it will reduce the number of competent mechanics active in the task of cleansing our air of automotive pollutants.

A public/private partnership in the design of a program to insure that cars are maintained and repaired properly—combined with a training program done in the same cooperative spirit—and testing done by a 2 speed idle test on a good piece of BAR90 equipment is what our citizens need to get the job done. People fix cars—machines do not!

Thank you Mr. Chairman and other members of the Committee.

Mr. MCINTOSH. Thank you very much, Mr. Dwyer, for that very strong statement. And I appreciate some of the insight that you bring to us from hearing from people around the country and throughout the State.

Let me now turn to questioning and, by custom, what we will do is have each member ask a total of 5 minutes of questions to anyone on the panel and then move on from there. I will lead off on this area.

Zeroing in on a couple of the things from Mr. Dwyer's statement, but I would welcome comments from everyone, you mentioned there were 6,000 businesses in the State of Virginia that engage in emissions testing currently. If you move to a centralized system, how many different outlets would there be in the State and would there be a reduction in the workforce in implementing the program and, if so, how many jobs would be lost by the move to this new regulation?

Mr. DWYER. Well, Bill talked about the ripple effect of not just emission lines. You are going to lose from the beginning. If you go in even with so much as a dynamometer before it is proved that that's necessary, the downside effects of that are going to dramatically reduce the numbers of people who will even be involved in the program. That's clear that's going to cost jobs. It means that a certain group of people are going to have the equipment that can do the testing and the repairing, and that group is going to get ever and every smaller and smaller in concentric circles until there are very few choices left and prices are going to be higher, inconvenience is going to go through the ceiling in the inconvenience factor.

So lots of jobs are going to go, not just the greatly reduced number of stations even if we go with a—even if we go with a decentralized test and repair with the dyno, quite frankly. This is reducing the number of competent mechanics who are the people that are active in reducing pollution. People fix cars. Machines don't fix cars.

Mr. MCGILLICUDDY. Congressman, there are not 6,000 inspection stations currently in Virginia. I think that there are 400 lanes in Northern Virginia right now. Those, if the EPA's program is implemented, those jobs will go immediately.

But it's not just those inspector jobs. Many of these businesses rely very, very heavily on the income from performing these inspections and being in also the safety inspection program, and this has evolved over 10 years or better. And when the emissions—when they lose that emissions revenue and the business associated with that, many of these businesses are going to be put on the bubble in terms of their viability.

Now, as Dennis said, I mean it goes on from there. But what you are basically taking away is one of the country's best emissions inspection programs that has worked and served the citizens of the Commonwealth very, very well. It's not broke. It doesn't need to be fixed. Does it need to have higher standards? Yes, and we all want to clean the air and we want to do our part, but to just throw it out and start all over with something brand new is going to cost many, many jobs for the Commonwealth and affect the economy drastically.

Mr. MCINTOSH. Thank you. Let me ask one other question. You mentioned, Mr. Dwyer, that there was one large corporation that stood to benefit from the centralized testing because they have an advantage in that technology. What company is that? What is the background about their business?

Mr. DWYER. Well, let me make a statement that I hope is not impolitic here. There was a company mentioned but I was speaking of a much larger company when I was speaking of that. But in one case a reporter, I believe in Colorado, made some statements and was quickly sued by this particular individual. And I, quite frankly, am not interested in a lawsuit, but I will talk to anybody in private about what's here, if you don't mind.

Mr. MCINTOSH. I actually may turn to members who have been in Congress here before. What is the law on immunity for people who give testimony before a congressional committee?

Mr. DAVIS. I think we're immune for statements on the House floor but I don't think—[Laughter.]

Mr. DWYER. Thanks a lot, Congressman. [Laughter.]

Mr. MCINTOSH. Let me indicate, OK, if there is some reluctance there——

Mr. DWYER. Let me say this. I was not referring to Envirotest at the time, although they were projected to have 60 to 80 percent of all the testing in the country. But there is going beyond that.

Mr. MCINTOSH. I will pursue this perhaps later in consulting with legal counsel because I think we need to have all of the facts about this and I don't want to put you in a position where you feel you may be injured for providing those tests.

Karen, I can't really see you so we may need to know if I've run out of time.

Ms. BARNES. You have.

Mr. MCINTOSH. OK. In that case, I will now turn to my ranking member, Mr. Peterson.

Mr. PETERSON. Mr. Chairman, in the interest of time I would yield my time to either Mr. Moran or Mr. Davis.

Mr. MCINTOSH. Why don't we reallocate that time and proceed with Mr. Davis and then Mr. Moran.

Mr. DAVIS. I want to be quick but I want to understand the situation. Right now to get your emissions tested you can go to one of your facilities and get it tested and if your car is dirty and it's polluting you can fix it right there while you wait, and then they can drive off with a clean car?

Mr. MCGILLICUDDY. That's correct.

Mr. DAVIS. And under this new procedure if you go and you get your car inspected and it's dirty you have to drive that dirty car to get it repaired somewhere else and then you have to drive it back again and get it inspected?

Mr. MCGILLICUDDY. Inspected, yes.

Mr. DAVIS. Very, very interesting. The chairman talked earlier about some of the impacts—actually, there is a third activity pending before this Congress that impacts, and that is the budget. We are going to be facing a number of rescissions and, frankly, seeing the way the regional office has performed in this, you have to wonder if we need all the regional offices that we have had before, what good the growth the high technology and fax machines and everything and some of the regulations here that don't seem to square it may be better having one rulemaker to deal with instead of different offices with different interpretations around the country.

And I would just throw that out if you have any reaction to that or not.

Mr. HARRELL. Congressman Davis, I just have one question of you, and I guess with the address from the Secretary the other day in front of the Governors conference that she reiterated a specific question with regard to the I/M test procedure that EPA was going to—had in the past and was going to continue their approach of complete flexibility with each State. And, in fact, she specifically described a program that apparently there had been a compromise made in the State of New Jersey.

Well, my question is, is this something that you all are seeing from EPA? Is there a new and revitalized flexibility on the part of EPA to listen to the Congressmen from Virginia and say we don't want this program, we think we can present you with a program that's going to work and is going to be consumer-friendly and clean the air, or is this just for public posture that we're hearing this?

Mr. DAVIS. Well, I'm not too sure the problem may not be in the regional office as opposed to the national office, and that's what—I think that's what I'm trying to get at when I talked about growth. But I think Mr. Moran can speak on that. He has been involved from the congressional perspective. I have been down at the grassroots from the local perspective concerned about this.

The only other question I have is how many instances do we have of service station operators where they have been found guilty of illegal emission inspections? Is there a long track record on this? Is this what is motivating the EPA in this case?

Mr. MCGILLICUDDY. That is the implication that EPA says that Virginia's program in 1993 the EPA officials insinuated that 85 percent of the emissions inspections were done improperly and that that's why you couldn't trust the people that are currently doing them.

Mr. DAVIS. What did they base that on?

Mr. MCGILLICUDDY. Well, I think the answer you are looking for, has there been fraud, this is EPA's big thing. I mean, they come in and threaten you with the loss of your highway funds and then say you can't have the system you have now because of fraud. And when you are questioned on the fraud it gets real vague other than these blanket statements.

Mr. DAVIS. Well, let me ask you have there been any convictions of any instances?

Mr. MCGILLICUDDY. I know of no conviction for in the State of Virginia of passing a dirty car, selling an emissions sticker. If there have been cases, I'm unaware of them. And I think Virginia's program, the audits done on Virginia's program covert done by Virginia is that we have—I believe it's a 92 or a 95 percent enforcement rate, which we are getting credit for 50 percent on the assumption that it was done illegally.

Mr. DAVIS. In fact, don't you need special training? Don't you need to go through some special training to be able to perform these emissions in Virginia?

Mr. MCGILLICUDDY. Absolutely.

Mr. DAVIS. And that's not true in——

Mr. MCGILLICUDDY. That is absolutely not true in——

Mr. DAVIS. I mean in other States that's not true; is that right?

Mr. MCGILLICUDDY. That's right. That's correct.

Mr. DAVIS. But in Virginia it is?

Mr. MCGILLICUDDY. But in EPA's program there will be very little training involved. In fact, they have ads—the contractors have ads for minimum wage part-time jobs if you want to work out of your house, and housewives, drivers.

Mr. DAVIS. Thank you. I could go on all day but we have other panels. I thank you very much for being here today. I think you have made a very compelling case.

Mr. MCINTOSH. Thank you very much, Mr. Davis. By the way, I will mention, Mr. Harrell, at the third panel today we will hear from the Environmental Protection Agency and will reserve your question for them.

Let me turn now to my colleague, Mr. Moran.

Mr. MORAN. Thank you, Mr. Chairman. To respond to the point that Mr. Davis brought up with regard to the regional versus headquarters, I have a sense that it's not the regional office as much as it is headquarters is where the problem is. But we will hear from Ms. Dunlop to give us more insight into her perspective.

The State suggested a compromise where a hybrid approach similar to what New Jersey and I think California is using where late model automobiles would be able to go to test and inspection

stations but the older model automobiles that produce much of the pollution would have to go to a central testing facility. But you wouldn't—if it was only older automobiles you wouldn't need as many central testing facilities and you would be able to focus on where the problem is.

Now, that would have required though that the test inspection stations apparently use the I/M 240 and have more aggressive training and certification procedures, but it was seen as a compromise. Now we are going to hear from the State on what happened to that and why it is infeasible for them to invest substantial sums of money in setting up the structure for that without getting some indication of whether EPA would approve it.

But can you tell us if you had your druthers and you were trying to negotiate a reasonable compromise here and move from the point where we are, what is possible, what is appropriate, and what is ideal, briefly? Maybe Mr. Harrell since he hasn't responded to this yet.

Mr. HARRELL. Congressman, I think that that approach is just exactly what it is. It is a compromise and whether you decide that by eliminating sending one segment of cars to a centralized facility simply because they are older and have perhaps the possibility of higher pollution, that you are going to be able to identify the centralized facility versus the newer cars that would be sent to a decentralized facility, I presume, that they were talking about under the original hybrid system.

It seems to be that it's actually from being there on the spot the key to these inspection programs is if you can identify the car, whether it's old or new, if you can identify the polluter and correct that problem it doesn't matter whether the car is 10 years old, 15 years old, or 3 years old.

Ironically, the newer cars are the most difficult to identify and repair. The older cars it's easy to identify a high polluter for a 15-year-old car and most of the times it's easier to repair it or you simply, as under the hybrid system, you were going to issue a $450 or a $750 waiver. That waiver was issued for 1 year. At the end of that period of a year if you didn't have the car repaired, it was junked. That has been one of the proposals.

So it would seem that if we are all on the same track here we want to identify all of the polluters and correct the problem, not just fail the cars. And it seems that this program by EPA is driven by failure rate of whatever that is, and we've heard anything from 25 to 35 percent. That is what drives the program.

And the other issue that drives the program is the inability for EPA to come to grips with a 50 percent deficiency that they immediately apply to a decentralized test and repair program, whether it has been measured or not.

Mr. MORAN. Mr. McGillicuddy mentioned that there was a GAO study that showed that there was no empirical evidence for assuming that only half of the inspections are proper inspections if it's at a test and repair station.

But the State suggested to break up the ownership to divorce the ownership; in other words, the people that actually operate the inspection would not have any supervision from the auto station or

whatever the equity owner of the property was. In other words, you would make them completely independent.

And I understand that the test and repair people who conducted that felt, well, that's possible that you could do that. You don't think it is, and I don't want to extend this beyond my time, but I don't know whether that was an acceptable compromise from your standpoint although the State suggested they would pursue it.

Mr. MCGILLICUDDY. Well, Congressman, that compromise was driven by this false notion that the people doing the testing now are dishonest. Now, the State does not believe that but they have been bludgeoned almost to death so that they now are trying to solve a problem that does not exist.

I would simply say to you that the centralized I/M 240 test only is a bad idea. It's a horrible idea. And to do it half way is just a half bad idea. I mean it makes the situation worse. Mr. Harrell has identified the cars—the gross polluters are easy to identify and, in fact, 10 percent of the cars contribute 80 percent of the pollution. The newer cars are cleaner and you said our air is better.

It's going to get better if we do nothing. We're not advocating doing nothing. We're just saying take a good program and make it better. The I/M 240 if you split up the older cars and newer cars, the I/M 240 is designed for the newer cars so if we are going to take something that is just riddled with problems and suggest that we send our older, gross polluters to be tested by a machine that does not need to test them and does not do very well on those cars.

Mr. MORAN. Thank you very much.

Mr. MCINTOSH. Thank you all very much for coming and joining us today. I appreciate that very much and we will look into this further in generic reforms, but we will also pass on the information gathered today to our colleagues at the Commerce Committee which oversees the Clean Air Act so that they will have the benefit of your statements and the information you have brought to us. Thank you very much.

Our next panel is representing the State of Virginia and local government and the chamber of commerce here in Fairfax County. Let me welcome to the witness table first an old colleague of mine from the Reagan administration, someone whose judgment I hold in very high regard, the Honorable Becky Norton Dunlop who is Secretary of Natural Resources for the Commonwealth of Virginia; also, the Honorable Robert Martínez, who is Secretary of Transportation for the Commonwealth of Virginia; and the Honorable Robert Dix, who is a member of the board of supervisors here in Fairfax County; and a colleague and friend who Fairfax County has been lucky enough to steal from the national chamber as their head of the county chamber, Ms. Lorraine Lavet.

Welcome to all of you. Let me before we proceed with your statements introduce to the audience and everyone here a colleague of ours, a Representative from Minnesota, Mr. Gil Gutknecht.

Mr. GUTKNECHT. Thank you, Mr. Chairman.

Mr. MCINTOSH. Gil, most of us ended up submitting our statements for the record and proceeding right to testimony. Do you have anything that you would like to submit for the record?

Mr. GUTKNECHT. No, not at this time. I just had a nice tour of Northern Virginia.

Mr. MCINTOSH. Oh, good. Welcome. In that case, let us proceed now to testimony from Ms. Dunlop, and let me ask each of the witnesses to try to summarize their testimony so we can kind of get into the question and answer periods.

Ms. Dunlop, thank you.

STATEMENTS OF BECKY NORTON DUNLOP, SECRETARY OF NATURAL RESOURCES, COMMONWEALTH OF VIRGINIA; ROBERT MARTÍNEZ, SECRETARY OF TRANSPORTATION FOR THE COMMONWEALTH OF VIRGINIA; MR. ROBERT DIX, MEMBER, BOARD OF SUPERVISORS, FAIRFAX COUNTY; AND LORRAINE LAVET, FAIRFAX COUNTY CHAMBER OF COMMERCE

Ms. DUNLOP. I thank you, Mr. Chairman. It's nice to have you sitting on that side of the table conducting this hearing. We welcome you to Washington, DC, and hope you and your lovely wife found a place to live in Virginia.

Mr. MCINTOSH. Yes, we did.

Ms. DUNLOP. Great, great. Well, I would like to thank you, Mr. Chairman, and the members of this subcommittee for inviting me to present testimony on H.R. 450, the Regulatory Transition Act of 1995.

For too long the American people have suffered under regulatory regimes which were devised for the benefit of those who govern rather than to encourage and promote sound environmental stewardship among the citizens, and H.R. 450 is the first step toward addressing that.

Mr. Chairman, I do have a fairly lengthy statement here so I will try to summarize it briefly. I recall you said you needed to leave at 10 o'clock and I do want you to be able to hear from all of these witnesses this morning.

I wanted to focus my comments this morning on the Clean Air Act Amendments of 1990. This is a law that was passed by a Congress that was certainly well-meaning in its intentions, but I believe that it was passed without the benefit of all of the scientific research that has been done that should have been part of the debate and the process on the Hill.

Of course, once the Clean Air Act Amendments were passed, then EPA promulgated regulations. These regulations become increasingly complicated as time passes and continue to be drafted and provided to EPA over the years to try to carry out what they believe is the intention of the act.

Ultimately, we believe, members of the committee, that the only way to really solve the problems is to relegislate the issue, and we would certainly encourage you to look beyond the relief that you are seeking for us with H.R. 450 to relegislation.

Let me, if I can, just talk about some of the issues that impact us seriously in Virginia that we believe need to be looked at, both for short-term regulatory relief and a long-term relegislative relief.

Sanctions and conformity. Secretary Martínez will address this in more detail, but let me just say that EPA has five primary weapons to use with bringing "unruly States appeal." First they can refuse to return the States' taxpayers' money to them via cutoff of Federal highway funding. This is obviously the most obvious and largest dollar amount sanction that the public is aware of.

Second, they can simply find the State's transportation plan out of conformity and stop approving projects, which is actually worse for us at the State level than the cutoff of dollars.

Third, they can require industries wishing to expand or relocate in a nonattainment area to provide twice as many emissions reductions as they expect to emit.

Fourth, EPA can simply move in and take over as they have done in California. And I am sure that Gov. Wilson and his team would be happy to address this committee on these points. And they have threatened to do this with Virginia's title V program and our water program.

And, fifth, they can just cutoff grant money that they have to provide States for particular projects if they deem that the State's action doesn't satisfy them.

It goes without saying, Mr. Chairman, that these are completely contrary to the constitutional principles of federalism and we in Virginia, as we've mentioned earlier, have filed a lawsuit against EPA because we believe that it violates the Tenth Amendment of the Constitution and we would urge you to address the points that we made in that lawsuit.

Now let me turn to the ozone standard, and I would like to refer back to the comments that Congressman Moran made earlier. If you will look at the chart here on the easel, it will show you that in 1988 the red bar is Northern Virginia. We had 72 exceedances in Northern Virginia in 1988. Congressman Moran talked about the unique conditions of that year and those conditions existed elsewhere in the country.

I want to point out to you, however, that subsequent to 1988 the air quality in Northern Virginia has improved dramatically and the amendments, we believe, of 1990, the Clean Air Act Amendments of 1990, were written to solve the problem that existed in 1988.

Now, they weren't written until 1990 and the regulations weren't promulgated until after that, so we were well on our way to solving the air problem that we had in 1988 and we are engaging in solutions today at this time which we think continue to improve our air quality. I think this is an important point that needs to be made and I hope that you will ask other States what their record was in this regard.

The next point I would like to touch on briefly is automobile emissions. The previous panel, I think, did a splendid job discussing it from their perspective, and that was the perspective of the small business person.

Let me just simply say that we are very frustrated with the Environmental Protection Agency and our frustration extends beyond the regional offices to the central headquarters where we were told a month before the election that they were going to engage in flexibility and we have not heard anything about the detail of that flexibility, any detail at all which would benefit Northern Virginia.

We have heard the Administrator talk about the New Jersey plan and how they have improved that and how flexible that is, but the core of the New Jersey plan is a centralized testing program. They have had a centralized program in place, they will continue to have it in place, and so that is a program that will not benefit Northern Virginia at all.

I think the other point that I would make is that in Richmond as we speak the General Assembly is reviewing legislation to deal with this issue and, very frankly, the Northern Virginia delegation, Republicans and Democrats alike in the General Assembly, do not trust EPA. They do not trust EPA at all to provide us fair credits that we deserve for an effective plan that is not centralized. The effort still seems to be on this county for not giving credit for any decentralized plan, and this is an area we think needs to be addressed immediately.

The gentlemen before us talked about the GAO study. There also was a Rand Corporation study that basically stated, based on effectiveness in reducing emissions we find no empirical evidence to require the separation of test and repair.

We judge that a properly safeguarded decentralized test and repair system can be designed that will be as or possibly even more effective then the program proposed by EPA and its cost-effectiveness is likely to be superior. None of this has seemed to sway EPA.

One further point that I would make with respect to automobile emissions is the whole concept of remote sensing. Your colleague, Mr. Barton, has some expertise in this area and I think will be holding hearings on this particular issue. But remote sensing is the most consumer-friendly method of identifying gross polluters, whether they be older cars or newer cars, and yet EPA gives no credit for remote sensing unless it's an add-on.

In other words, if remote sensing—if you design a program where remote sensing is at the core of your program and then you have a repair—inspection and repair built around that, you get no credit. At least we haven't heard that you will get any credit for it.

We think that that is a promising technology that is consumer-friendly and will allow us to identify the gross polluters that will, if we can get those cars fixed or off the road, will further enable us to clean up our air.

The title V program is a program that we think needs to be dealt with immediately. We have a good program in Virginia but we believe that the title V program, and a colleague of yours told me who worked on the title V program during the Bush administration that he was shocked at what the title V program had become—simply a paperwork exercise. There are over 1,100 pages of regulations now dealing with this program that was strictly understood to be when it was passed a recordkeeping exercise.

The enforcement area needs to be dealt with. EPA focuses a lot on enforcement. We think enforcement is important. But we think that getting people into compliance with the law, which means having regulations that are understood both by the regulated community as well as the regulator, is key and critical, and this is where your committee obviously comes in.

Mr. Chairman, let me say once again that Gov. Allen, his entire team, my agencies, and I believe the General Assembly and the congressional delegation of Virginia are fully committed to continuing to work toward improved air quality and improving the environment in Virginia, and we would like to work closely with you as you work to achieve the end of making this easier for us to do.

In sum, let me just paraphrase the popular commercial. In this instance, Mr. Chairman, relief is spelled H.R. 450. We look forward to working with you to help provide that relief.

[The prepared statement of Ms. Dunlop follows:]

PREPARED STATEMENT OF BECKY NORTON DUNLOP, SECRETARY OF NATURAL RESOURCES, COMMONWEALTH OF VIRGINIA

Thank you Mr. Chairman and members of the Subcommittee for inviting me to present testimony on H.R. 450, the Regulatory Transition Act of 1995. For too long the American people have suffered under regulatory regimes which were devised for the benefit of those who govern rather than to encourage and promote sound environmental stewardship among the citizens. H.R. 450 is the first step toward addressing that.

This morning, I would like to focus on needed changes to the Clean Air Act Amendments of 1990. This regulatory structure serves neatly as a microcosm of most environmental regulatory structures: Congress passes a well-meaning, but nebulously drafted law without the contribution of sound science; EPA begins to promulgate regulations, which at first are only complicated and poorly drafted, but which over time become progressively more prescriptive and detached from the intent and language of the original statute (as well as any common sense approach), and finally, states, businesses and citizens are left trying to decipher and implement the maze of law and regulations in a time frame that fails to consider interim changes in site and situation specific circumstances and the continually changing regulatory regime.

Ultimately, the only remedy left is to attempt to re-legislate the issue—the Hydra-like regulations are impossible to untangle and it becomes apparent that the law is not working toward its stated goals, but rather forces thousands of hours of negotiation between states and EPA on paper solutions and paper exercises.

This is the stage at which we presently find ourselves with respect to the Clean Air Act Amendments of 1990. EPA, which has recently begun emphasizing the level of flexibility permitted by law that they are apparently now willing to exercise, has expressed a growing interest in pursuing administrative fixes to the states' numerous complaints with the Act and its implementation. But the inescapable fact is that EPA, however well-meaning they might be, should not be fixing by regulation the problems they created by regulation. They simply do not have the basic cost-benefit cultural orientation required to really comprehend and solve our problems with the Act's implementation. EPA is not nearly as constrained by the concept of opportunity cost as state officials are. State officials must make choices about how best to spend taxpayers dollars—money spent on negotiations with EPA cannot be spent on advancing new technologies that actually improve the environment.

I would like to examine some examples where the costs and benefits are not well balanced and where a legislative fix is the only path out of the woods.

SANCTIONS AND CONFORMITY

EPA has five primary weapons to use when bringing unruly states to heel. First, they can refuse to return the state's taxpayers' money to them via cutoff of federal highway funding. Second, they can simply find a state's transportation plan out of conformity and stop approving projects. Third, they can require industries wishing to expand or relocate in a nonattainment area to provide twice as many emissions reductions as they expect to emit. Fourth, EPA can simply move in and take over—as they have done in California and threatened to do with Virginia's Title V program and our water program. Fifth, they can cut off grant money for particular projects if state action does not satisfy them. It goes without saying that we view these provisions as the most onerous in the entire Act. They are completely contrary to the principles of Constitutional federalism, and they give EPA too much administrative discretion to work their will and way on the states. Through these provisions EPA can re-interpret the will of Congress as expressed through the authorization and appropriation processes. This they have done and this is the reason why H.R. 450 must be passed until congress can fix the problem statutorily.

TITLE I—OZONE STANDARD

There is much confusion over the ozone standard and what constitutes a violation. Let me try to explain. In any given area, the states, under the watchful and approving eye of EPA, set up ozone monitors. If one of these monitors reads an average of more that 120 parts per billion of ozone for one hour, an exceedance occurs. If

there are more than 3 exceedances at any one monitor in a three year period, then a violation occurs.

We believe this approach is, at a minimum, counter-intuitive. Having 4 single hourly values on 4 separate days is not sensible. For example, we could experience a reading of 125 parts per billion each of those 4 days and zero readings the other 1,090 days during that time and be considered in nonattainment. In other words, exceeding 4 hours out of 26,280 hours (3 years), or .015% of the time, puts you into nonattainment. The costs of preventing these exceedances range into millions of dollars each year, as localities engage in a frantic rush to avoid ringing up one of the monitors. This cannot be argued to be a health issue in with any credibility.

Virginia must demonstrate attainment by deadlines ranging from 1996 to 1999, as set out by the Clean Air Act Amendments, using ozone data collected in the 3-year period leading up to the attainment date itself. The 1977 Clean Air Act at least allowed a determination of attainment 3 years after the emplacement of controls. This made sense. All controls should be in place and the full effects realized before we are expected to attain the ozone standard. Current statutory requirements essentially move the attainment date forward 3 years. We need a legislative fix so that attainment status can be determined in the 3 year period after controls have been put in place.

TITLE I—AUTOMOBILE EMISSIONS

Among other things, Title I of the Clean Air Act Amendments calls for areas designated as nonattainment for ozone to come up with plans to reduce the precursors of ground-level ozone by 15% (from 1990 levels) by 1996 (for moderate areas) and 3% each additional year until to 2010 (for Los Angeles). To help craft these plans, the Act requires that the Governor appoint local elected officials to an "air quality committee" which is responsible for producing recommendations to the state on how best to achieve the reductions. As part of these plans, areas classified as moderate and above must implement an inspection and maintenance for automobile emissions. Areas classified as serious and above must implement an "enhanced" inspection and maintenance program.

To complicate this already messy scenario, EPA promulgated regulations in which they announced that they would only give 50% credit to automobile emissions testing programs which relied on decentralized test-and-repair stations to perform the testing. While some data was offered in the preamble to the rulemaking, it was by no means rigorous or based in sound science or statistics. This is a rule that is causing serious problems for Virginia as we work to achieve attainment in Northern Virginia. Northern Virginians, Republican and Democrat lawmakers, do not trust EPA to ever give us the full credits we deserve for an effective plan that is not centralized. This needs to be changed immediately.

Unfortunately, the CAA allows for both test-only networks, in which state-operated or state-contracted stations are only permitted to perform emissions tests on vehicles, and test and repair networks, in which service station dealers, independent garages, and auto dealerships can perform both the emissions test and the necessary repairs. In fact, the statute specifically contemplates the sort of program that Virginia proposed last summer.

"Operation of the program on a centralized basis, unless the State demonstrates . . . that a decentralized program will be equally effective. An electronically connected testing system, a licensing system, or other measures (or any combination thereof) may be considered . . . as equally effective for such purposes." 42 U.S.C. 7511a(c)(3)(C)(vi).

Despite the clear statutory mandate to allow both types of networks, the EPA has attempted to force states into adopting test-only networks by giving 100% emissions credit for test only, and 50% credit for test and repair networks. This decision was made without any probative data to indicate that test-only networks were more efficient that test and repair networks in reducing emissions.

In fact, the U.S. General Accounting Office, in a report to Congress said after reviewing the basis for EPA's decision that, ". . . this information . . . does not provide quantifiable support for a 50% reduction." The GAO specifically addressed the three main studies—conducted in 1980, 1982, and 1985 (whose results are not representative of many programs in operation today including the Virginia program)—from which EPA derived its crediting rate. In testimony to Congress GAO wrote that, "Because of the approach, EPA was unable to make unbiased estimates of the effectiveness rates of the I&M programs in these cities or to project results nationwide." The GAO also questioned the validity of three more recent studies—from New York, Missouri, and California—pointing out that the sample sizes were so small that they were statistically meaningless.

The GAO was not alone. The RAND Corporation, in testimony in California, offered that "Based on effectiveness in reducing emissions, we find no empirical evidence to require the separation of test and repair . . . We judge that a properly safeguarded decentralized [test and repair] system can be designed that will be as, or possibly even more, effective than the program proposed by EPA, and its cost effectiveness is likely to be far superior."

None of this swayed EPA, which continued to press ahead on their model program, insisting that only a fully centralized program using the IM–240—the most expensive equipment available—was worth full credit. They turned a deaf ear to repeated warnings that such a program would not work; that the citizens in several states would simply not accept it, as has been the case in Maine, Maryland and Texas for example. Even now, EPA has yet to move away from the 50% discount. With respect to equipment, they have grudgingly told New Jersey they would consider different equipment but that they have not changed their view that different equipment would be discounted also. Quite obviously, the only remaining remedy is legislative relief.

As technology advances the possibility of states employing the concept of remote sensing, the most consumer friendly testing possible, looks more promising. EPA has refused to give any credit for use of this technology despite the fact that its use is required by the Act and thus far EPA concedes credit only if remote sensing is an add-on not if it is the core of the program.

TITLE V

The Clean Air Act Amendments of 1990 require states to develop and implement programs in which currently operating stationary sources of air emissions will be compelled to apply for and receive permits. These permits are supposed to be recorded-keeping permits. In fact, Mr. Chairman, one of your former colleagues who worked on the title V program has professed real shock to me at what this program has become. They do not impose additional limits on emissions. They instead painstakingly put all currently applicable federal limits and requirements in a single permit. Additionally, EPA intends for sources to demonstrate continuous compliance with all permit limits by using expensive continuous emissions monitoring; if this is not possible, then even more onerous record-keeping is required. In short, the Title V program is a massive paperwork exercise that will do little or nothing to improve air quality.

Title V permits are required for all sources with the potential to emit 100 tons per year of a "criteria" pollutant (volatile organic compounds, nitrogen oxides, particulate, carbon monoxides, etc.), 10 tons annually of one hazardous air pollutant, or 25 tons annually of any combination of hazardous air pollutant. In a serious nonattainment area (Northern Virginia), the threshold drops to 50 tons annually for those pollutants which triggered the nonattainment.

There is a unique twist to this program. Under EPA's definition of "potential to emit" one must assume that a source operates at its maximum emission rate for 8,670 hours per year unless there are federally enforceable conditions that limit operations (and hence emissions). To our knowledge, only four states, including Virginia, have state operating permit regulations that are federally approved and therefore federally enforceable.

This means that, to keep our smaller sources (like cabinet repair shops, autobody shops, etc.) out of the reach of the federal Title V program, we have to writ state permits for all of them. Without the state permit, these sources would be considered major for Title V, as well as for the toxics provisions of Title III. This is a make work exercise. There can be no rationale for writing permits for sources that are truly insignificant.

A simple solution would be to have sources simply certify that their actual emissions are below major thresholds. This approach would be easy for Congress to prescribe, the EPA to flesh out, and the states to administer.

There's only one problem—it assumes that EPA is following some direction in program design when it comes to Title V. Perhaps the most troublesome aspect of this program is that EPA keeps changing the guidance. The latest change was just this November when EPA decided that they did indeed want the permits opened for minor modifications. We now have about 1,000 pages worth of guidance on Title V.

I can write the intent of the Act in three sentences: "States shall codify in a single document all the federal requirements that apply to any sources subject to Title V of the CAAA. As changes are made to any such facility, states shall use their own new source procedures, as appropriate, to allow these changes and shall automatically add these changes to the operating permits. States shall use their own existing

reporting requirements to make certain that sources comply with the terms of their permits."

Of course, to be able to make the regulations simple, more comprehensible, and thorough, we need legislative relief.

TITLE VII—ENFORCEMENT

Title VII authorizes an EPA field inspector to cite someone with a $5,000 fine for a de minimis infraction. Additionally, EPA can inflict civil charges of as much as $200,000. In such circumstances, the fined party is presumed guilty until proven innocent. This is not what I learned was our system of justice. Often these charges stem from record keeping or reporting breaches. Procedures for issuing orders and assessing penalties place accused companies at a serious, often insurmountable, disadvantage in defending themselves. We need to focus efforts on solving real environmental problems and getting businesses into compliance. Such a focus needs legislative underpinning.

CONCLUSION

Mr. Chairman, we in Virginia are committed to improving air quality and have so demonstrated. I have briefly touched on several elements of the Clean Air Act from which the states and the business community need relief. There are, of course, several other problems with the Act which I have not discussed; I hope this is the first of many opportunities we have to explore ways in which the Act may be improved. We believe that you are on the right track with H.R. 450.

To paraphrase a popular commercial, Mr. Chairman and Committee Members relief is spelled H.R. 450. Thank you for this opportunity to appear before the Subcommittee. We look forward to working closely with you in future days to provide that relief.

Mr. MCINTOSH. Thank you very much, Ms. Dunlop. Our next witness will be Mr. Martínez, the Secretary of Transportation.

Mr. MARTÍNEZ. Thank you, sir. I am Robert Martínez. I am the Secretary of Transportation for the Commonwealth of Virginia. The Clean Air Act Amendments were produced subsequent to several years of adverse summer weather when pollution inversions were evidenced throughout much of the Nation.

It was written in haste without due consideration of its economic impact. It introduced a new area of Federal control and coercion. The EPA was extremely delinquent in publishing and the implementing regulations which in final form allow no flexibility or opportunity for innovation by the States.

Many of the transportation and mobile source requirements inefficiently emphasize regulation of behavior and intrusive paper policy exercises. The lack of flexibility and unwillingness to consider new concepts is imposing economic hardships on Virginia.

Under the conformity provisions of the Act and in its regulatory interplay with ISTEA, approvals of major transportation projects have been prohibited in many States throughout the Nation, including in Richmond, VA. The prohibitions were applied in Richmond in November.

I am referring to prohibitions that halt new construction due to a lapse of conformity with the Clean Air Act. This is related to EPA's regulatory approach, some of which is unfounded in statute, and due to the EPA's interpretation of regulations.

In addition to the Richmond situation, we are also under imminent threat of having our transportation projects halted in Northern Virginia, again due to the threat of a lapse in conformity. Even transportation projects that are irrefutably beneficial to air quality are barred from approval by EPA regulations.

The regulations obstruct not only the approval of major Federal transportation projects but those that are solely State or locally funded but deemed regionally significant. So, the issues relate not only to threats regarding the actual withholding of Federal funds. That is a very important point.

Additionally, prohibitions are being imposed long before any congressional provision would require the imposition of a statutory sanction. Notwithstanding many recommendations and requests, the EPA published the final rule without change. The EPA, furthermore, pursued the dangerous action of implementing some rules without the benefit of public review or comments.

In Northern Virginia and Richmond nonattainment areas the transportation plans have been and are being designed to meet the difficult conformity tests imposed by the law. Prohibitions are, nevertheless, being imposed in both areas due to what EPA considers deficient air quality planning, not transportation planning.

The costs potentially are in the hundreds of billions of dollars in transportation improvement projects, funds, and jobs. The outlook for the future without intervention is complete obstruction of the transportation plans and programs.

If we are not considered to come into conformity for Northern Virginia, this means that individual projects would be halted at major decision points in the project development process, such as at clearance of environmental documentation, right-of-way acquisition, or location and design approvals.

Remember, this is not limited to federally funded projects and only a few types of projects would be exempted from the controls. Should such a halt of projects endure for more than a few weeks, Virginia would face massive problems in obligating Federal funds available to the State on to other projects which would be at appropriate project development phases, a problem further aggravated by the strict manner in which the fiscally constrained features of the ISTEA planning process operate.

As such, any prolonged lapse of conformity de facto will result in the loss of Federal funds as we face the inability to obligate Federal funds to projects prior to the end of the Federal fiscal year. The lapse of conformity from a purely management perspective also represents an unacceptable disruption to our transportation program.

Virginia is also challenged with——

Mr. MCINTOSH. Mr. Martínez, if I could ask you to summarize your statement.

Mr. MARTÍNEZ. I will right now. Virginia is also challenged with the difficulty of meeting the Clean Air Act in Hampton Roads area, originally considered a marginal nonattainment area which now has been elevated to a moderate nonattainment area.

In conclusion, there are several specific projects which I could talk about. We have a major project in southeastern Virginia in the Hampton Roads area as well, which again the EPA has intruded in a totally arbitrary manner with an interpretation which is not in the statute and which is causing a major disruption to our plans in the Hampton Roads area.

It is not only an issue about the withholding per se the sanction of Federal funds; it's also an issue about the lapse of conformity

which, in effect, at the end of the Federal fiscal year would cause Virginia to lose Federal funds.

[The prepared statement of Mr. Martínez follows:]

PREPARED STATEMENT OF ROBERT MARTÍNEZ, SECRETARY OF TRANSPORTATION FOR THE COMMONWEALTH OF VIRGINIA

My name is Robert Martínez. I am the Secretary of Transportation of the Commonwealth of Virginia. Thank you for the opportunity to speak at today's hearing.

On November 15, 1990, President Bush signed the Clean Air Act Amendments passed by Congress. This Act was produced subsequent to several years of adverse summer weather when pollution inversions were evidenced throughout much of the nation. I believe that it is written in haste without due consideration of the economic impact of the law. It introduced a new area of federal control and coercion. The EPA was extremely delinquent in publishing the implementing regulation which in final form allowed no flexibility or opportunity for innovation by the states. Many of the transportation and mobile source requirements inefficiently emphasize regulation of behavior and intrusive paper policy exercises rather than providing compliance technology. The lack of flexibility and unwillingness to consider new concepts is imposing economic hardships on the Commonwealth.

Under the conformity provisions of the Act, and in its regulatory interplay with ISTEA, the surface transportation authorization, approvals of major transportation projects have been prohibited in many states through out the nation, including in Richmond, Virginia. The prohibitions were applied in Richmond in November, 1994. I am referring to prohibitions that halt new construction due to a lapse of conformity with the Clean Air Act. This is related to the EPA's regulatory approach—some of which is unfounded in statute—and due to the EPA's interpretation of regulations.

In addition to the Richmond situation, we are also under imminent threat of having our transportation projects halted in Northern Virginia, again due to the threat of a lapse in conformity.

Even transportation projects that are irrefutably beneficial to air quality, by themselves, are barred from approvals by EPA regulations. The regulations obstruct not only the approval of major federal transportation projects but those that are solely state or locally funded, but deem regionally significant. So, the issues relate not only to threats regarding the withholding of federal funds. Additionally, prohibitions are being imposed long before any Congressional provision would require the imposition of a statutory sanction. Notwithstanding many recommendations and requests from the transportation community, the EPA published the final rule without change. EPA furthermore pursued the dangerous action of implementing some rules without the benefit of public review or comment.

In the Northern Virginia and Richmond non-attainment areas, the transportation plans have been and are being designed to meet the difficult conformity tests imposed by the law. Prohibitions are, nevertheless, being imposed in both areas (already in Richmond, threatened in northern Virginia) due to what EPA considers deficient air quality planning, not transportation planning. The costs potentially are in the hundreds of millions of dollars in transportation improvement projects, funds, and jobs. The outlook for the future, without intervention, is complete obstruction of the transportation plans and improvement programs.

If we are not considered to come into conformity for Northern Virginia, as an example, this means that individual projects would be halted at major decision points on the project development process, such as at clearance of environmental documentation, right-or-way acquisition, or location and design approvals. Remember, this is not limited to federally-funded projects, and only a few types of projects would be exempted from the controls. Should such a halt of projects endure for more than a few weeks, Virginia would face massive problems in obligating federal funds available to the State onto other projects which would be at appropriate project development phases, a problem further aggravated by the strict manner in which the fiscally constrained features of the ISTEA planning process operate. As such, any prolonged lapse of conformity de facto will result in the loss of federal funds, as we face the inability to obligate federal funds to project priorities to the end of the federal fiscal year. The lapse of conformity, from a purely management perspective, also represents an unacceptable disruption to our transportation program.

In the Hampton Roads region, the Commonwealth is also challenged with the difficulty of meeting the Clean Air Act. Hampton Roads, originally considered a marginal non-attainment area, has now been elevated to a moderate non-attainment

area. The transportation plans for that area must now be analyzed to determine how much regulation must be imposed to meet new conformity requirements.

The Clean Air Act Amendments, as applied, are imposing a severe impact on transportation planning and place a virtual halt to economic development in non-attainment areas. Note that I fully and strongly believe that transportation must be provided in an environmentally-beneficent manner, and we must seek to deliver greater capacity, thereby strengthening economic growth, through cleaner more environmentally beneficial forms of transportation. However, sound transportation planning and delivery cannot be held hostage; and transportation cannot be the means of achieving extraneous environmental or social objectives.

Another area of major concern is the unrestrained promulgation of regulations by federal agencies through the use of Federal Register rule making. The absence of management oversight and control of agency demands has resulted in the imposition of unfunded, unrealistic and oppressive administrative burdens upon the Commonwealth.

The National Environmental Policy Act, Title 1, Section 102(c), requires the preparation of a basic five section environmental document to support federal decision making. The Act also requires the lead federal agency to consult with any other federal agency which has jurisdiction by law, or special expertise with respect to any environmental impact involved.

This rather simple law has been translated by federal agencies into a cumbersome, time-consuming and expensive process that subverts the objectives of state and local government. We have a very recent example of this problem in Virginia.

More than a decade ago, the cities of Virginia Beach and Chesapeake and the relevant Hampton Roads Metropolitan Planning Organization requested that the Commonwealth pursue studies for a 20-mile long expressway connecting the southeastern area of the state. The purposes for the project included relieving pressure upon the existing thoroughfare system, supporting realization of the local comprehensive land use plan, economic development and hurricane evacuation. This is a state funded project.

There are two major federal approvals required for project construction. They are approval for modification of limited access right of way for an interstate connection and the issuance of Section 404 permits for wetland impacts.

The FHWA agreed to serve as the lead federal agency for this study with the full participation of all state and federal environmental agencies. A consultant was employed in 1987 and a comprehensive environmental study was initiated pursuant to state and federal law.

The study process included comprehensive traffic and transportation analysis, environmental inventory and analysis, social and economic analysis and an extensive public participation program. The federal agencies recommended a series of alternatives for inclusion in the study for the specific purpose of avoiding and minimizing impacts to wetlands. Those alternatives and all other recommendations were included with the draft environmental impact statement. A draft environmental impact statement was approved by the Federal Highway Administration in 1989 for distribution to 25 state and federal agencies for review and comment. Public hearings were conducted throughout the area.

The Corps of Engineers and Environmental Protection Agency sent comments expressing concerns about the 314 to 525 acres of wetlands to be destroyed by the ultimate eight-lane project. They questioned the traffic analysis and need for the project and the completeness of the draft environmental impact statement. Both agencies indicated that permits would probably not be issued for construction.

The Commonwealth recommended and the federal agencies agreed to form a steering committee of state and federal representatives to resolve the federal agency concerns. Through this process, the number of lanes was reduced from eight to four and the roadway realigned to minimize wetland impacts. This effort reduced the wetland impact from the range of 315 to 525 acres for eight lanes to between 85 and 157 acres for a four-lane 20 mile long expressway. The Commonwealth, of course, committed to compensate for wetlands destroyed by the project. Upon receiving the reduced proposal, the agencies again expressed doubt about permits being issued.

In 1992, the Commonwealth was successful in convening a meeting of regional federal administrators to seek methods for achieving a mutually acceptable solution. The regional administrators agreed to commit the resources necessary to successfully complete this study.

A regional study team, chaired by the Federal Highway Administration, worked for two years to complete the study and to develop a supplemental draft environmental impact statement. During this effort, the federal agencies concurred on the purpose and need for the project. They helped locate and design a consensus align-

ment that was expanded from four lanes to include HOV lanes, fringe parking lots and reserved right of way for future rail service.

All of these consensus decisions were submitted by the regional study team to the regional administrators in a subsequent meeting, and they agreed to commit the resources to complete the study. The federal agencies reviewed each chapter of the supplemental draft environmental impact statement before it was approved by FHWA for public and agency consumption.

We have now received comments from the federal agencies questioning the completeness of the document prepared by the regional team and the magnitude of impact for the expanded consensus alignment.

The Commonwealth has expended over $5 million in state funds at the behest of the federal regulatory agencies and cannot, even with the direct assistance of those agencies, produce a document that they agree is acceptable.

As I wrote to Ms. Carol M. Browner on January 6, the implementing regulations for the National Environmental Policy Act state that the purpose of that federal law is not better environmental documents, but better decisions that count. The purpose is not to generate paperwork, even excellent paperwork, but to foster effective action.

I would urge you to recognize the severe economic impact associated with federal rule-making and with arbitrary regulatory interpretations, and to provide relief. I would also ask that you specifically provide relief from the unfunded and uncontrolled mandates associated with environmental regulations.

Thank you.

Mr. MCINTOSH. Thank you very much. I appreciate your bringing those particularly severe consequences to our attention. Let me turn now to Mr. Dix who is representing the Board of Supervisors here in Fairfax County. Thank you, Mr. Dix.

Mr. DIX. Good morning, Mr. Chairman. I have submitted a full testimony for the record but I will try and paraphrase some in answer to some of the comments here this morning. I am Bob Dix. I do presently have the honor of serving as the acting chairman of the Fairfax County Board of Supervisors but in this case, more importantly, I also represent Fairfax County on a number of regional bodies as well as serve as the vice chairman of the air quality committee for the National Association of Counties.

The metropolitan Washington air quality region includes suburban Maryland, the District of Columbia, and Northern Virginia. It is currently classified as a serious nonattainment area by EPA. This is the mid-range of nonattainment classifications.

As you are all too aware when the 1990 Clean Air Act Amendments were being created the year for which data was collected and comparisons made, as indicated earlier, was 1988. Indeed, 1988 was a very hot summer and resulted in actually 26 days in which the metropolitan Washington region allegedly exceeded the standard of .12 parts per million of ground level ozone, resulting in those 72 violations.

Now, as we all know, the most significant factor impacting the formation of ground level ozone is the weather pattern. Ground level ozone is formed when a combination of sunlight, temperature, and emissions resulting from a variety of sources interact resulting in concentrations particularly in volatile organic compounds and nitrogen oxides.

The interaction and corresponding ozone creation forms a bell curve associated with peak daily temperatures and when a violation does occur it is for a maximum of approximately 2 hours on any given day and oftentimes is less. This matter we're dealing with is primarily a May through September issue and primarily a Monday through Friday issue.

Many sources contribute to the mix which produces ozone. Some would have you believe that this is mostly caused by the automobile. This is factually incorrect. In this region approximately 36 percent of the total emissions inventory is related to mobile sources and approximately two-thirds of that is not commute-related. Let me repeat that quickly. Approximately two-thirds of the emissions resulting from mobile sources results from trips to the grocery store, the doctor's office, the soccer field, the movie theater, et cetera. Other types of off-road and stationary sources, include lawn and garden equipment, marine products, industrial uses, power plants, auto body finishing shops and others.

I am a particular proponent of measures that utilize advances in technology as well as incentive-based techniques to create solutions to our clean air challenges that are based on cost-benefit relationships and which do not result in unwarranted or unnecessary cost, confusion, or inconvenience for our citizens and businesses.

Extraordinary progress is resulting from improvements in technology alone as is evidenced by the fact that compared to 26 violation days in 1988 there were 2 in 1992, 5 in 1993, a summer which was hotter than 1988, and 4 violation days in this recent summer of 1994.

This means that we have exceeded the Federal standard for ground level ozone for less than 24 hours in the past 3 years in the metropolitan Washington region. And those statistics reflect outcomes that are resulting without the draconian measures that are being recommended by some representing the environmental community as well as some at EPA.

This morning I was going to talk about a number of different issues resulting in the problems that we have locally, but I am going to modify that because some of my colleagues have talked about that a little bit. But I want to touch on the fact that we are under in this region a requirement to submit a plan for attainment and maintenance that was required to be submitted in November of this past year.

Part of the influence of the urban air shed molling exercise that will tell us what we just achieved were due from EPA last spring. They were received in this region in late October so we didn't even receive the materials from EPA until October for a plan that was due in November.

We have joined with—we, the Metropolitan Washington Council of Governments, have joined with the National Governors Association and the National Association of Regional Councils and asked for an additional year's time in order for those attainment plans to be submitted based on simply the fact that we didn't receive the information from EPA.

I want to cite one other example and then I will close quickly. That I discovered through this work that there is, of course, a Federal incentive that has allowed for employers to offer to the employees to use alternate forms of transportation rather than single occupant vehicles a tax-free incentive of up to $60 a month to use Metro, to use bus, to use car pool, and some other type of form. Many Federal agencies in Washington offer that incentive to their employees, but until January the one agency that I'm aware of that

did not was the Federal Environmental Protection Agency, ironically.

Thank you for the great privilege and honor to spend a few minutes with you this morning. The rigid, inflexible, and dictatorial positions that have been taken by the U.S. Environmental Protection Agency as it relates to the metropolitan Washington region, the member States, and the local governments, is an approach that I believe seeks to focus on mobility restriction and establishment of measures to control patterns and densities of land use rather than focus on incentive-based measures that include technology advances in creation of solutions to our air quality challenge.

The cost that will be incurred by local governments, business, and individual citizens will be enormous. The confusion and inconvenience which will be forced upon our citizenry will result in greater resistance and a higher level of noncompliance.

I respectfully request that this committee recommend a national moratorium on the requirement for submission of attainment plans for at least 1 year. I further recommend that a cost-benefit analysis be a requirement of any provision or rulemaking that seeks to impose mandated provisions or regulations on State and local governments.

Additionally, I recommend that the focus of this entire measure be redirected to include significant attention to advances in technology and the creation of incentive-based approaches to establishing solutions to this most important environmental challenge.

Last, I recommend that flexibility be included to allow States to adopt measures that will meet their goals, yet will provide the opportunity for creative approaches working in partnership with their local governments to achieve measurable positive results in improving our overall air quality.

Thank you very much for the opportunity to join you this morning.

Mr. MCINTOSH. Thank you very much, Mr. Dix, and thank you once again for making this facility available.

Mr. DIX. Happy to have you.

Mr. MCINTOSH. Now I will turn to our final witness on the panel. For those of you who are watching the clock, the ever-helpful staff has told me that we don't have a vote until 11 today so if there is unanimous consent among my colleagues I will extend this until 10:25 or 10:30.

And Mr. Peterson asked me to let you know that he was leaving not because he was not interested in what you had to say but he had a previous engagement at 10:30 and that he needed to head back for that.

So, Ms. Lavet, thank you.

Ms. LAVET. Thank you very much. Again, it's an honor to be able to appear before you today on behalf of the Fairfax County Chamber of Commerce. And we are here today to express our strong support for immediate passage of H.R. 450. We represent nearly 2,000 businesses throughout this region and we provide tens of thousands of high quality jobs throughout Northern Virginia.

The cost of complying with Federal regulations and paperwork burdens is skyrocketing, not only in dollars but in terms of the time spent figuring out simply how to comply with the myriad

forms and requirements. Some estimates are now saying that the cost of Federal regulation is some $580 billion—that's billion dollars—on the American public.

In fact, we went back to OMB and now compiled statistics by their own numbers that 6.6 billion hours were spent by the American public filing out forms, questionnaires, surveys, compiling records, and these are traditionally underestimated by many accounts. These burdens are particularly painful on small businesses which represent a very large part of not only my community but certainly the American business community, the engine of our economy. Many use that term and I think that is true.

The SBA, in fact, has estimated that a proportion to cost of regulatory compliance for small business is almost three times that of large business. So at a time when we are trying to startup more and more small businesses, we are doing everything to stop that from happening through this regulatory process.

But, again, it's often the cumulative cost of regulations that is so awful. We are here today to talk about one particularly onerous law that will require implementation. But when you think about a single small business like the ones that came up here today, that is just one in thousands of regulations that they must comply with, so multiply that by maybe a thousand times and then maybe you have a sense of what a small business has to go through on a day to day basis to operate.

Worst of all, many of the rules that you have heard about have very important societal goals. I don't think anybody here today will doubt the importance of quality air. Indeed, as a local chamber of commerce, we live here, our children live here, we go to school here, our families are raised here, and I can't think of any greater reason as to why we would want to meet the highest possible standards of environmental cleanliness, shall we say, not only in air but in water. So certainly my remarks are couched with that in mind.

Over the past decade I would like to just mention in addition to clean air, a number of laws that we all know are very important. I think of OSHA, for example, Family Medical Leave Act, ADA, another very important concept. But then again, let's take a look at some of the things that have happened over time with these things in terms of the implementation. The important thing is that the ultimate goal of any of these things are undermined because the regulations coming out are far too difficult for small businesses to understand. And that assumes they can even get a copy of the regulation, and we assume this is available to all businesses throughout the country but it's not readily available. And that's the kind of thing that we need to do something about.

I must say that the first part of this whole process of which H.R. 450 is a part, the passing of the unfunded mandate legislation yesterday in the House and certainly in the Senate last week, is a very important first step in helping curb these mandates on State and local governments even more importantly from my perspective on the private sector.

H.R. 450, the Regulatory Transition Act of 1995, is another key component to this. We think it is time for a time out imposing new

burdensome regulations on the private sector so we can evaluate the need for these things and the necessity for having them.

I have submitted for the record a series of what we think are enhancements to the legislation which will even make it stronger. We think that there are a few things that can be done to even improve upon an already excellent proposal. And I will not go through all those in great detail today but I have left them with the staff to consider.

Just to wrap up in the very short time that we have, H.R. 450 is a key component of the regulatory relief tools that are out there. In addition to the unfunded mandate legislation which I must tell you I take great pride in the passage on the Senate side last year. I coauthored the private sector amendment while I was still at the U.S. Chamber and to see that pass, I have enormous pride in that because there wasn't even a thought of including the private sector on the Senate side. But on the other hand, I would like to commend Congressman Moran whose leadership in the last Congress to include the private sector remains there and I would like to acknowledge that as well. He was extremely helpful to us in the last Congress.

Enactment of the Paperwork Reduction Act. Who can imagine that we have been trying to enact that since 1989. I have led the Paperwork Reduction Act Coalition in Washington since 1989 and we could not get the committee chairs to move that bill. Finally, we see in the Senate some action in the Governmental Affairs Committee and we're hoping for quick passage of that very important piece of legislation.

Enhancements to the Regulatory Flexibility Act require an assessment of the impact on small businesses. Most of these agencies don't even do these things. It's required by law to do a special assessment of the impact on small business. Routinely they ignore it and we have to go back and say, by the way, you forgot to do something. Oh, yeah. And then they go and do it. But, usually, they come out and say no special impact on small business. We know that's not the case.

Passage of risk assessment legislation. Very important. And I know that's moving along. But even more important is strong oversight of the Office of Information and Regulatory Affairs because as excellent as this bill is, we were blessed in the Bush era to have the counsel on competitiveness to be overseeing a lot of the implementation of these things. Right now, unfortunately, we don't necessarily have someone in that office who is going to oversee these things the way we'd like to. So I urge this committee to have ongoing oversight of the Office of Information and Regulatory Affairs.

Again, it's time for truth in regulation. The public deserves no less. And I thank you very much for this opportunity to testify.

[The prepared statement of Ms. Lavet follows:]

PREPARED STATEMENT OF LORRAINE LAVET, FAIRFAX COUNTY CHAMBER OF COMMERCE

The Fairfax County Chamber of Commerce appreciates the opportunity to testify before you today in support of H.R. 450. We represent nearly 2,000 businesses throughout the region, which provide tens of thousands of high quality jobs.

The cost of complying with federal regulations and paperwork burdens is skyrocketing in both dollars and the time spent figuring out how to comply. Some esti-

mates place the total cost of federal regulations on American taxpayers in excess of $580 billion annually. According to the federal government's own statistics, in 1993 Americans spent more than 6.6 billion hours filling out forms, answering survey questions and compiling records for the federal government. These burdens are particularly painful for the small business community. The SBA estimates that the proportionate cost of regulatory compliance for small businesses is almost three times that for large firms.

It is often the cumulative cost impact of paperwork and regulatory burdens—as opposed to any one particular regulation or paperwork request—that has the gravest consequences on business performance and job opportunities. Worst of all, the ultimate societal goals, many of which are positive, are often undermined due to an inability of these entities to comply.

Over the past decade, numerous well-intentioned laws were imposed on our economy such as OSHA, the Family and Medical Leave Act, the Resource Conservation and Recovery Act, the Americans with Disabilities Act, and Superfund. The Senate took an important first step in passage of S.1 last week, a bill which will help curb unfunded mandates imposed on state and local governments, as well as the private sector. We are hopeful that with your leadership, the House will also pass this landmark legislation.

H.R. 450 "the Regulatory Transition Act of 1995" is another key component of Congress' efforts to curb excessive and unnecessary burdens on the private sector. We support your approach.

We support the concept of taking a "time-out" from imposing new burdensome regulations on the private sector, so we can reevaluate the necessity and ease of implementation.

We wish to offer a few enhancements to this important legislative proposal.

• Section 6. Definitions, 6(3)(B)(i), Exclusions: add an additional exclusion condition; "and regulations that promote furtherance of economic growth and development." We've been contacted by a number of industries that have certain regulations in the pipeline which are key to doing business, such as certain FCC, SEC, DOT, FTC, and OMB rules. With this caveat, these pro-business growth regulations can proceed.

• Section 6. Definitions, 6(3XB)(i), Exclusions—Head of Agency: As written it presumes that the agency head will act independently to make the determination that a regulation meets these exclusions. This is likely to lead to political determinations. I suspect that there will be cases where certain constituencies will lobby the agencies aggressively to release their pet regulations. This makes the President's report on the regulations which are allowed to go forward extremely important. Indeed during the Bush Administration Moratorium the Council on Competitiveness provided an important check & balance to this process. Unfortunately, no such entity exists today.

• Section 5. Emergency Exemptions, 5(a)(2), Add "human" health & safety. This is the phrase used by the Bush Administration in its moratorium. This is key to limit the scope of exemptions. Otherwise I fear that endangered species act, plant life, etc. will be rolled into the definition.

• Liability for civil penalties: If the regulations to implement a statute passed prior to the moratorium is on hold, yet it contains severe penalties for non-compliance, we are concerned that inadvertent non-compliance may occur. This happened to some degree during the regulatory promulgation of the ADA. Perhaps an amendment could be added to exempt the covered constituency from liability until the regulations are promulgated in final form.

H.R. 450 is a key component of the regulatory relief tools needed by the private sector:

• Enactment of unfunded mandates legislation with the private sector provision is key. As a co-author of the private sector provision in the Senate bill, I took great pride in observing S.1's passage last week.

• Enactment of the Paperwork Reduction Act of 1995. I led the Paperwork Reduction Act Coalition since 1989. That is how long we have been deliberating on a bill which should have passed the Congress unanimously. Instead, our efforts were halted due to uncooperative committee chairs who did not understand the plight of the small business community.

• Enhancements to the Regulatory Flexibility Act is essential to add accountability to the agency requirement to conduct analyses of the impact of new regulations on small businesses. Typically, lip-service is paid to this requirement. It is not unusual for agencies to publish a statement that there is no adverse impact on small businesses. Worst of all, it is common for no analysis to be performed at all, unless challenged by the private sector to do so.

• Passage of risk assessment legislation to ensure that sound science is used in formulation of new regulations.
• Strong oversight of OIRA to ensure that they are fulfilling the requirements of these tools. In recent years there has been a move away from these issues and greater focus on other matters. We have not been successful in getting their support for many of the above initiatives.

Thank you for the opportunity to testify today. I am pleased to respond to your questions.

Mr. MCINTOSH. Thank you very much, Ms. Lavet. Let me lead off with just one question. In the interest of time, I will be brief so that we can move on to the next panel. But let me just let you know that the Paperwork Reduction Act will be marked up in this subcommittee and then by the full committee next week, so that portions of the reforms will proceed. Our colleagues in the Commerce Committee will be working on the regulatory relief provisions.

Also, the leadership has indicated that they would like to take all of these to the floor on the week of the 22nd of February so let me urge everybody who has an interest in this issue to follow us in the House as we proceed in the next month to move forward aggressively to address these problems.

My one question is for Ms. Dunlop and it's a simple question and I don't know whether the answer is more complicated or not. We have heard about alternatives to the centralized testing program and the potential for saving enormous amounts of costs and protecting consumers from inconvenience of the program that the EPA wanted.

On the benefits side, would these alternative programs give you the same or perhaps even better benefits in terms of assuring that we have reductions of emissions of these pollutants?

Ms. DUNLOP. When you talk about the alternative plans, do you mean the plans that we would like to see put in place—remove sensing and decentralized testing?

Mr. MCINTOSH. Yes.

Ms. DUNLOP. Yes, absolutely. In fact, as was alluded to earlier, Mr. Chairman, one of the most frustrating aspects of this mandated program to have centralized testing facilities using I/M 240 equipment, which is so sensitive, is that the mere fact that you have twelve locations for 600 vehicles to go through Northern Virginia meant there would be no question there would be long waiting lines.

If you assume that an occasional car is indeed polluting, that means they are sitting in a waiting line polluting. Then they fail the test. And we will presume for the moment that they failed the test because the car really pollutes.

Then they have to go somewhere else, drive a polluting car somewhere else to get it fixed. The repairman will not have this very expensive equipment, the I/M 240 equipment, so they are making an educated guess, if you will, that they are repairing the problem and eliminating the pollution.

Then the driver would have had to bring the car back to the centralized location, sit in line again presumably and hopefully this time not polluting, before they drove through and hopefully then pass.

Our position was that this was not good for the consumer. In fact, the stress level for many consumers may cause heart attacks or strokes just sitting in line and being late for meetings.

But it also would not be good for the air quality; that it is better to be able to take your car to a local service station, one of 400 sites across Northern Virginia, have your car tested and repaired by someone who has the equipment available to make sure it could be repaired. You didn't have to drive around between the inspection and the repair and continue polluting.

The remote sensing idea we just think is a great new technology and if it can be employed what it would do, you could set these remote sites up anywhere in Northern Virginia and pick up the cars that were grossly polluting.

So instead of having every vehicle have to go through a testing facility every 2 years in a mandatory way just to check and see if perhaps they were polluting, you would be able to be proactively out seeking out the cars that were really contributing to your air quality problems and getting those in repair.

We have found that, and I think even EPA will concede this point, that if a car is well-maintained it is less likely to pollute. And if you can identify cars that are not well-maintained and are gross polluters and get them into shops so that they can be repaired, you will improve your air quality in dramatic ways.

Further, I would just add from the economic—the environmental justice standpoint, we think it's a very important to talk about the cost that is placed on individuals who will have to sit in lines and get their cars repaired. And everyone knows that the person who is mostly likely to be hurt by having to sit in a long line for hours to get their car repaired is the person who is an hourly wage employee, a person who may be working two jobs to keep their family together and afford the roof over their heads. These people also are likely to be the people who are driving the older cars which are more likely to be gross polluters.

So there is much greater cost to an individual in the way of just pure environmental justice to the lower income person who is trying to hold house and home together with an hourly wage and also has a car that is going to require repairs.

Mr. MCINTOSH. Thank you. Thank you very much because one of the things I have maintained over and over again is that these efforts to change the way we regulate will fully protect the environment, will fully protect workplace safety and other areas, and I wanted to see whether these alternatives were going to give us those benefits. Thank you.

I will cede back the rest of my time. Let me turn now to Mr. Moran, if he has any questions for this panel.

Mr. MORAN. Well, my only question refers to a meeting that Senator Warner and I and others members of the Virginia delegation had with EPA and we had members of the State present as well. And in that meeting the Assistant Administrator of EPA, Mary Nichols, agreed that she would work with the Commonwealth of Virginia to craft a plan that would be cost-effective so when she left that room we were all under the assumption that the EPA was going to go out and mend its ways and work constructively, and yet here we are in the same situation, it seems.

Now, did EPA make any efforts to get together with you, Ms. Dunlop, and work it out?

Ms. DUNLOP. Well, let me answer that by saying, first of all, before we left the meeting that day, Mr. Moran, we set a date for the meeting that was 2 weeks hence. Actually, before I got out of the room I was asked by the EPA people to delay the meeting.

Subsequently, they did call and say, OK, now we're ready to meet. My technical team went, sat down with them, and said, OK, tell us what your ideas are for improving our plan and basically came back and reported to me that there were no suggestions made other than that our ideas were not acceptable to them.

Since then we have not had any fruitful discussions, although we have occasionally been called by region three to say are you ready to meet. My response has been if you can send down to us a letter that tells how much credit you are willing to give us for test and repair, decentralized test and repair, how much credit you are willing to give us for remote sensing, and how much credit you are willing to give us for episodic solutions that will deal with the problem Supervisor Dix mentioned of the particular summertime problems, so that we can craft that into our plan, we are ready to meet any time. Come on down to Richmond and we will have a meeting room waiting for you. Those meetings have not occurred.

I will say, frankly, Mr. Moran, that as time goes by and Administrator Browner makes speech after speech and flexibility gets more flexible, that maybe it's a good thing that we waited, because now I think their term of flexibility may allow us to go back and revisit the program that we talked about last summer of having a fully decentralized program using our honest businessmen and women in Northern Virginia who run service stations and do it honestly and are committed to cleaning up the air.

Mr. MORAN. So, essentially, EPA's approach has been you tell us what you want to do and we'll tell you whether we're going to veto it or not?

Ms. DUNLOP. That's correct.

Mr. MORAN. But they are not reaching out and trying to work with you to come up with something that is mutually acceptable?

Ms. DUNLOP. That is correct. Now, Administrator Browner did say on television Saturday that they now have a menu of solutions, a menu of things that the States can do and the credit that will be applied to that. Of course, we haven't seen that in writing so we are waiting for that.

Mr. MORAN. Thank you, Ms. Dunlop. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Moran. Let me turn now to my colleague, Mr. Davis.

Mr. DAVIS. Thank you. I think if Mr. Gutknecht were here—he had to leave early—he mentioned before he left—he said this sounds like $50 solutions for $5 problems that, in point of fact, when you take a look at the problem and the amount that we are asking people to pay to solve that problem, it just isn't justified.

I think this is a prime example of that and that is why Congress yesterday, the House, over 360 votes for the Unfunded Mandates Reform Act and why although no one likes to put the regulatory moratorium in effect it's about the only way you can get the mes-

sage through and get some breathing room till we can put some sense into this.

And, of course, we have the cost-benefit analysis bill working its way through the—to be reported out of Science Committee, I think, next week.

So all that is a result of this kind of activity where instead of being helpful, Government saying, well, you tell us and then they say no to everything. Are we getting any kind—the problem is, as you say, a few hours a summer, basically, is what we are focusing all of this energy on, all of this expense on.

Are we getting any credit for the episodic solutions?

Ms. DUNLOP. No, sir. In fact, when we first talked last summer with EPA there were three points that I made when we submitted our summer plan that were completely ignored.

One was the episodic solutions, in other words, as Supervisor Dix mentioned, the problem most often prevails in the summer Monday through Friday. We suggested that if conditions the day before indicated that we were going to have an ozone exceedance, let's say on Wednesday and on Tuesday we had such a signal——

Mr. DAVIS. Would you know generally in advance?

Ms. DUNLOP. We have a much better chance of predicting now than we have had in the past. Would the Federal Government be willing to shut down on Wednesday to eliminate all that commuter traffic, much the way they do when there is a snow emergency.

Our position was if, in fact, you are contending that this ozone is a health problem, then certainly you would want to help solve that problem by having your people stay home inside and not clog up the streets with congestion. No response from EPA.

The next point we made was that we would like to have the Federal fleet that is based in Northern Virginia converted promptly to clean fuels vehicles.

Mr. DAVIS. The county has done some of that, haven't they, Mr. Dix?

Mr. DIX. Yes.

Ms. DUNLOP. All of the counties in Northern Virginia have done some of that and the Commonwealth has done some. The immediate reaction by the GSA fleets administrator was we don't have to do that; we're the Federal Government. Well, that upset Mr. Moran who made it clear that he would expect the Federal Government to lead in these areas.

We are now in our General Assembly considering passage of a piece of legislation, an amendment that will require—the State will have an unfunded mandate on the Federal Government to require this fleet conversion in Northern Virginia.

Mr. DAVIS. Turnabout is fair play. [Applause.]

Ms. DUNLOP. And the third point that we asked the Federal Government to consider was to work with Federal agencies where over 1,000 employees were located at a single site or within walking distance so, again, they could lead the way looking for opportunities for ride-sharing and car pooling.

Again, there was complete silence from the Federal Government. No cooperation.

Mr. DAVIS. Thank you. I have additional questions but I think we want to get to the last panel, then I will reserve and be able to talk individually. Thank you all very much.

Mr. MCINTOSH. Thank you all very, very much. I appreciate you coming today to give that very helpful testimony.

Let us move now to the third panel that we have scheduled for today, and I want to apologize to them that we won't have as long a time to be able to ask you questions but we want to give you as much time to make your statements and points to us so that we can be aware of it.

On this panel are Mr. Stan Laskowski, the Deputy Regional Administrator, Region Three, from the Environmental Protection Agency; Ms. Ellen Bozman, who is vice chairman of the Arlington County Board; and Ms. Sheryll Crosby, who represents the Shortness of Breath Club, American Lung Association.

Thank you all for coming today and welcome. I appreciate your taking the time to come and be with us here in the committee today. Let me start by asking, again, on our order of preference, asking those who are not Government officials to go first. Let me ask Ms. Crosby if she could lead off and then Mr. Laskowski and then Ms. Bozman.

Ms. Crosby.

STATEMENTS OF STAN LASKOWSKI, DEPUTY REGIONAL ADMINISTRATOR, REGION THREE, ENVIRONMENTAL PROTECTION AGENCY; ELLEN BOZMAN, VICE CHAIRMAN OF THE ARLINGTON COUNTY BOARD; AND SHERYLL CROSBY, SHORTNESS OF BREATH CLUB, AMERICAN LUNG ASSOCIATION

Ms. CROSBY. I'm here to represent the countless number of people that suffer from lung disease, especially in the Northern Virginia area. And I just wanted to share with you the human impact of this very important issue.

Suddenly you feel your chest tighten. You cough, you wheeze. Breathing becomes difficult. You panic as you try to catch your breath. It feels like you're drowning and there is no escape.

Why is this happening? What did you do to bring on this attack? Simple. You made the mistake of going outside when the air quality was poor. On days like this just going outside to get the mail, walking to your car, or picking up your child at school can be dangerous. Why? Because you, like millions of other Americans, suffer from asthma, a chronic lung disease.

What is even more terrifying is that while lung diseases such as asthma are on the rise, legislators are considering proposals such as H.R. 450 that would, in effect, relax the clean air standards.

Why is this being considered? Is it to increase our economic growth and attract more business? But at what cost? We in Virginia need a stronger inspection and maintenance plan, not a weaker one.

If we loosen these regulations we are taking a step backward. We must protect our environment for the sake of our children. Our future rests with them, yet childhood asthma and asthma-related deaths are steadily on the rise. How can they justify relaxing regulations on both State and Federal levels when these actions will put our future generations at risk?

Breathe in, breathe out. It's a simple process. But for those of us with lung disease, it isn't that easy. This is not the legacy I want to pass on to future generations. If air quality standards are relaxed, how many more people will suffer and even die?

We must also consider the medical cost of people's suffering from these environmentally related diseases. How much will be spent on Medicare, Medicaid, disability, and workmen's compensation if standards are relaxed? Are we really willing to risk lives for the sake of economic growth? What is the good of a booming economy if you can't catch your breath to enjoy it? As the American Lung Association slogan says, "When you can't breathe, nothing else matters."

Actually, I am one of the lucky ones. I have asthma, a reversible airways disease. This means with appropriate medical care, proper medicines, and avoidance of asthma triggers, I can lead a productive life.

For me, like many others, some of the major asthma triggers include air pollution, smoke, and exhaust fumes. These things can set the hypersensitive airways of an asthmatic into bronchial spasms, bouts of uncontrollable coughing, wheezing, and straining every muscle just to breathe.

Like many of you here today, I never thought of asthma as a serious illness. How wrong I was. Some days, just getting up and dressed becomes an insurmountable task. Never mind fixing breakfast, getting the kids off to school, going to work and trying to do household chores, because some days it takes all your effort just to breathe.

Again, I am lucky. On bad days I can retreat into the safety of my home, my air conditioners, electronic air filters, and dehumidifiers. I can reach for my medicines to help me breathe. My medicine alone costs between $700 to $1,000 a month. I have been hospitalized 22 times in the past 5 years.

I have good medical coverage. I can call my doctors. I can get the help I need. But what about those who can't? Diseases like asthma are on the rise, especially in economically disadvantaged areas.

How can those without medical insurance afford the proper treatment? Who will pay the bill as increasing numbers of people suffer from these environmentally related disease? Will we Americans be able to afford the costs? Are reducing the clean air standards really worth the risk? The price tag is more than just dollars and cents. It's lives and the quality of that life that ultimately will suffer.

Ladies and gentlemen, when I was asked to speak at this hearing many thoughts and ideas went through my mind. What could I say to you that would make a lasting impression? I thought of running through all the statistics on the increase in lung disease and how this directly correlates to the ever-increasing pollution problem and the declining air quality.

But what really do numbers mean? You probably hear numerous statistics throughout this hearing. You may hear that reducing regulations will stimulate economic growth and make it easier for business. You may hear how much money Federal and State governments may save if reductions in regulations are made.

But how can these numbers compare to even one human life? I am a high school teacher in Fairfax County schools. I teach earth

science and I know firsthand that our children are well aware of the pollution hazards and the problems they will inherit.

Mr. MCINTOSH. Ms. Crosby, if I could ask you to summarize your statement for us.

Ms. CROSBY. I'm almost done.

Mr. MCINTOSH. Thank you.

Ms. CROSBY. I firmly believe that we as adults teach by example, so how can we put money and business and growth ahead of human welfare? We talk about our youth and the decaying moral values, but where do these values originate?

When we as adults can put economic growth ahead of human life then the answer is clear. Let us show by example that human life, not material goods, is what is really important. Consider the message we are sending our children. Fight to preserve our country's greatest resource: its people.

[The prepared statement of Ms. Crosby follows:]

PREPARED STATEMENT OF SHERYLL CROSBY, SHORTNESS OF BREATH CLUB, AMERICAN LUNG ASSOCIATION

Suddenly you feel your chest tighten, you cough, wheeze, breathing becomes difficult, you panic as you try to catch your breath. It feels like you're drowning and there is no escape. Why is this happening? What did you do to bring on this attack? Simple—you made the mistake of going outside when the air quality was poor. On days like this just going outside to get the mail, or walking to your car, or picking up your child at school can be dangerous. Why? Because you, like millions of other Americans, suffer from asthma, a chronic lung disease.

What is even more terrifying is that while lung diseases such as asthma are on the rise, legislators are considering proposals such as HR #450 that would in effect relax clean air standards. Why is this being considered? Is it to increase our economic growth and attract more business? But at what cost? We in Virginia need a stronger Inspection and Maintenance Plan not a weaker one. If we loosen these regulations we are taking a step backwards. We must protect our environment for the sake of our children. Our future rests with them, yet childhood asthma and asthma related deaths are steadily on the rise. How can we justify relaxing regulations on both state and federal levels when these actions will put our future generations at risk?

Breathe in, breathe out—it's a simple process but for those of us with lung disease it isn't that easy. This is not the legacy I want to pass on to future generations. If air quality standards are relaxed, how many more people will suffer and even die? We must also consider the medical costs for people suffering from these environmentally related diseases. How much will be spent on Medicare, Medicaid, disability and workmen's compensation if standards are relaxed? Are we really willing to risk lives for the sake of economic growth? What good is a booming economy if you can't catch your breath to enjoy it? As the American Lung Association slogan says, "When you can't breathe nothing else matters."

Actually I'm one of the lucky ones. I have asthma, a reversible airways disease. This means that with the appropriate medical care, proper medicines and avoidance of asthma triggers, I can lead a productive life. For me, like many others, some of the major asthma triggers include air pollution, smoke and exhaust fumes. These things can set the hypersensitive airways of an asthmatic into bronchospasm bouts of uncontrollable coughing, wheezing and straining every muscle just to breathe. Like many of you here today, I never thought of asthma as a serious illness. How wrong I was! For those of us with lung disease some days just getting out of bed and getting dressed is an insurmountable task. Never mind, fixing breakfast, getting the kids off to school, going to work and trying to do household chores, some days it takes all your effort just to breathe.

Again I'm lucky, on bad days I can retreat into the safety of my home with my air conditioners, electronic air cleaners and dehumidifiers. I can reach for my medicines to help me breathe. My medicine alone runs between $700 and $1,000 dollars a month. I have been hospitalized 22 times in the past 5 years. I have good medical coverage. I can call my doctors. I can get the help I need! But what about those who can't? Diseases like asthma are on the rise especially in economically disadvantaged areas. How can the many people without medical insurance afford the proper

treatment? Who will pay the bill as increasing numbers of people suffer from these environmentally related disease? Will we Americans be able to afford the costs? Are reducing the clean air standards really worth the risk? The price tag is more than just dollars and cents—it's lives and the quality of that life that ultimately will suffer.

Ladies and gentlemen, when I was asked to speak at this hearing many thoughts and ideas went through my mind. What could I say that would make a lasting impression? I thought of running through statistic after statistic that correlates increasing lung diseases with the ever increasing pollution problem and declining air quality. But what do these numbers really mean? You'll probably hear numerous statistical data on both sides. You many hear that reducing standards will stimulate economic growth or that state and federal governments will save money by relaxing regulations. But how can these numbers compare to even one human life? I am a teacher in Fairfax County schools. I teach Earth Science and I know firsthand that our children are well aware of the pollution hazards and the problems they will inherit. I firmly believe that we adults teach by example, so how can we put money, business and growth ahead of human welfare. We talk frequently about our youth and the decaying moral values. But where do these values originate? When we as adults can put economic growth ahead of human life then the answer is clear. Let us show by example that human life and the quality of that life is what is important. Consider the message we are sending our children. Fight to preserve our country's greatest resource—it's people.

Mr. MCINTOSH. Thank you very much. Mr. Laskowski, you are next. And if you could use your opportunity to maybe respond to some of the things that were mentioned today about the Environmental Protection Agency and give us your view on that.

Thank you very much for coming.

Mr. LASKOWSKI. Thank you, Mr. Chairman. I am Stan Laskowski, the Deputy Regional Administrator from Region Three of EPA. And I have heard the passion expressed here and we try to work with people. We try to work with the States and with our Congressmen and with our industry. Obviously, we have a long way given the responses here. We will redouble those efforts.

I will say that I have just say this; that the many fine folks at EPA, they took a lot of hits today and I have to tell you that over the years it was they and our State counterparts and our local government officials who were responsible for the improvements we've made so far.

But I thank you again for the opportunity to discuss what EPA is doing in Northern Virginia to try to help the State meet the Clean Air Act standards and at the same time provide the flexibility for meeting those standards.

There are still air quality problems in Northern Virginia. There are still violations. Things are getting better according to the data. There are meteorological reasons perhaps they're getting better. It's also a sign that the regulations that have been put in place so far over the last few years are working, and that is part of the reason we think for the improvements. So we have made progress but we have a long way to go.

Mr. Chairman, we have submitted the testimony of Sally Katzen, the Administrator for the Office of Information and Regulatory Affairs as the administration position on H.R. 450.

My statement which I will summarize, has also been submitted and indicates that EPA's approach to these complex air quality problems are based on three principles: one, to attain public health goals stated in the Clean Air Act; second, is to do that within the deadlines of the Clean Air Act; and, third, to try to be as flexible as we can in reaching those goals.

With respect to the inspection and maintenance program, the Clean Air Act requires an I & M program in many areas. It also requires that these areas have a 15-percent reduction plan for reducing by 1996 the smog-forming emissions by 15 percent. EPA continues to believe that an enhanced test-only I & M program using high technology testing equipment is one of the most cost-effective and efficient ways for the States to improve air quality.

We also recognize that some States have difficulties with EPA regulations and concerns include consumer inconvenience and the impact on local repair garages. In answer to these concerns, EPA has worked with the States to be more flexible in meeting Clean Air Act goals.

For instance, EPA has worked with California, Georgia, New Jersey, to fashion I & M programs that will work for them in their States. These are so-called hybrid programs that showed elements of those centralized and a decentralized components of the I & M program.

EPA will shortly be proposing and has already announced new regulations for I & M, for conformity with the transportation plans, and for the improvement programs. Each of these will provide the States with more flexibility in meeting the requirements of the Clean Air Act.

Some of these I & M flexibilities in other States include allowing retesting at service facilities, remote sensing which you do get credit for, and mechanics training.

So we look forward to working with the State of Virginia to take advantage of these flexibilities; however, we must insure that the plan that is submitted meets the air quality goals. More specifically, if the needed number of tons reduced does not come from I&M, they must come from elsewhere, industrial sources or whatever. Now there, of course, we get into discussions of the various credits.

Just a couple words of conformity. The Clean Air Act requires that there must be in conformity between the State implementation plans and the State transportation improvement plans, or TIPS. EPA has had meetings with a wide variety of stakeholders, including representatives of the States and EPA and the county governments to resolve the concerns about the Clean Air Act.

And one of the concerns about the sanctions, Administrator Browner this past Tuesday has signed an expedited revision of conformity rule that would, in effect, continue to protect the States until such time as a decision has been made on the Clean Air Act so that the transportation concerns, I hope, will be lessened considerably, if not alleviated.

So in conclusion I would like to say that I think the States and EPA have made considerable progress working together meeting the Clean Air Act requirements. There have been State implementation plans submitted. As of last July the latest count I have, there are 1,350 SIP's that have been submitted and although there were some—quite a few sanction clocks that were started, there is only one place in the United States that has a sanction now imposed. So we, I think, have been very successful in trying to work out the differences here in this complex area.

Also, I would say that 40 million people are now breathing—40 million more people are now breathing clean air than 5 years ago but we recognize we still have a long way to go in Northern Virginia.

So EPA continues to adjust and to be as flexible as possible while insisting that the Clean Air Act goals be met. Administrator Browner has personally been in contact with the Governor to demonstrate her commitment. We at EPA will continue to work hard with Virginia on their proposals and to try to work through these differences. You have our commitment for that.

[The prepared statement of Mr. Laskowski follows:]

PREPARED STATEMENT OF STAN LASKOWSKI, DEPUTY REGIONAL ADMINISTRATOR, REGION THREE, ENVIRONMENTAL PROTECTION AGENCY

Good morning Mr. Chairman and Members of the Subcommittee. I am Stanley Laskowski, Deputy Regional Administrator for EPA Region III. I welcome this opportunity to talk about two areas that I understand are of particular interest to Members: enhanced vehicle inspection and maintenance programs, and conformity of clean air and transportation programs. These two programs are key parts of the Agency's ongoing initiative to provide states with flexibility on ways to achieve health-based clean air goals and standards.

Mr. Chairman, I have submitted to the subcommittee a prepared statement of the Administration position on H.R. 450, the Regulatory Transition Act of 1995. I request that this statement by Sally Katzen, Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, be made part of the record.

As Administrator Katzen states, the Administration has done much to improve the regulatory system, and recognizes there is much more that needs to be done. H.R. 450 would raise legal issues and numerous questions about what actions are covered, diverting officials who would otherwise spend their time working on substantive solutions to the real problems with the regulatory system. It makes more sense to focus on the substantive sources of that frustration and try to reduce them than to devote our resources to administering a moratorium.

With regard to the Clean Air Act, EPA recognizes the need to work in partnership with states to implement major portions of the 1990 Amendments and to secure clean air for all Americans. By working together, EPA and states have met the goals of the Act thus far and have learned a great deal about common sense solutions to some challenging implementation issues. We are continuing to improve our regulatory approach to help states meet the public health-based air quality standards and goals of the Act.

These changes are built on fundamental principles. We need to maintain the public health and environmental goals of the Act; we need to stay within the deadlines outlined for meeting those goals; and we must be flexible about how we reach those goals.

INSPECTION AND MAINTENANCE

EPA has recently announced a decision to provide states with significant flexibility in developing enhanced vehicle inspection and maintenance (I/M) programs to ensure that states have the tools they need to meet emission reduction goals.

The Clean Air Act requires I/M programs in many areas. For these areas and others, states have selected I/M as a significant component of their state implementation plans (SIP) to meet the Act's goal of a 15 percent reduction in smog-forming emissions by the end of 1996 and to attain the health-based standards. A number of states have requested that EPA provide more flexibility on design and implementation of the I/M program. After meeting with several Governors to discuss this and other clean air issues, Administrator Browner announced her decision to modify the I/M rule to provide states more flexibility in a December 20, 1994 letter to Governors.

We continue to believe that an enhanced test-only program using high-technology testing equipment is one of the most efficient and cost-effective ways for states to improve air quality. However, we recognize that a number of states may be able to modify their I/M programs and continue to meet the public health and environmental goals of the Clean Air Act.

The following changes in our approach provide substantial additional flexibility for states to meet the public health and environmental goals of the Clean Air Act:

- Some states may be able to demonstrate that they do not need all of the emission reductions from a full enhanced I/M program to meet the reasonable further progress and attainment requirements of the Act, or they may choose to make up the emission reductions from other sources, such as factories or powerplants. EPA plans to propose changes to the current I/M rule so that states that make this demonstration will be able to meet an alternate enhanced standard with a test and repair I/M program. The Agency will grant appropriate emission reduction credit depending on the type of I/M program that is implemented.
- Some states need the emission reductions from a full enhanced I/M program and are worried about consumer convenience. They can use hybrid programs such as the ones adopted by California and Georgia. We will work with states that want to consider such programs.
- Some states may be concerned about consumer "ping-ponging." They may want to consider the hybrid approach suggested by New Jersey which requires initial tests at a test-only facility, allows retests at service facilities, and includes other features such as remote-sensing and mechanic training.
- Some states have already made the decision to adopt the efficient and cost-effective enhanced I/M program. They may wish to add features such as remote-sensing to receive even more credits, providing them additional flexibility in meeting overall air quality goals.

EPA believes that these approaches will address many of the concerns that states have articulated, and are willing to work with any state that wants to look at other hybrid approaches. In the case of Virginia, we have met with state representatives several times during the past year. We remain ready and willing to work with Virginia on an I/M program, but to date we have not received a program submittal from the state. We are optimistic that with the recently announced flexibilities, an I/M program acceptable both to the State and to EPA can be developed.

Regional Offices will continue to work with states to provide technical support in developing their I/M programs. Prompt action by affected states will be necessary to assure that we continue to deliver healthy air according to the timetables of the Clean Air Act.

EPA staff has been working diligently during the past month to draft the proposed rule to provide additional flexibility. Approximately 200 people attended public meetings on the program that were held January 24 and 31. We believe stakeholder input is essential as we revise the rule. Our schedule is to publish a proposed rule in the Federal Register in late March or early April, obtain public comments and hold public hearings, and complete the rule changes by mid-summer.

CONFORMITY

On another front, the Agency has just taken action to provide states with increased flexibility in meeting the Act's requirements for conformity of transportation and clean air plans.

Over the past year, EPA and the Department of Transportation have worked closely with representatives of a number of groups—such as the National Governors' Association, National Conference of State Legislatures, National Association of Regional Councils, and National Association of Counties—to resolve issues involving implementation of the Clean Air Act and the Intermodal Surface Transportation Efficiency Act. One concern was that conformity restrictions could act as an early highway sanction against states that do not yet have approved state implementation plans for ozone.

The conformity rule requires that state and regional transportation plans conform to the state's SIP. Under the rule, if the state hasn't met SIP submittal requirements within 12 months of the SIP's due date, the current transportation plan and program becomes invalid and the state becomes ineligible for certain federal transportation funds.

Administrator Browner on January 31 signed a revision to the transportation conformity rule to address this state and local concern. Accomplished through a special expedited rule, the revision ensures that transportation plans and programs do not become invalid as a result of ozone state implementation plan deficiencies until the date on which mandatory SIP sanctions would take effect. In effect, this means the conformity rule will not shorten the time period states have to correct ozone SIP problems before they would face sanctions. This cures a potential problem in Virginia and other states.

OPERATING PERMITS

I would like to touch briefly on an initiative involving the Title V operating permits program. EPA has been working with a number of stakeholders—including states, environmentalists and industry—to simplify the permit revision process. As a result, the Agency will soon issue a supplemental proposal that would significantly simplify and streamline the permit revision process that we proposed in August 1994. We are also establishing a working group with the states, headed by Ohio, to address additional issues.

PROGRESS

Finally, I would like to stress the great progress that states and EPA have made in the difficult struggle to achieve clean air.

States have done a great job in meeting the Act's requirements for state implementation plan submissions. As of last July, more than 1,350 SIP submissions were due for submittal to EPA. Even though many sanction clocks were started, all but two submissions were received in time to avoid sanctions. As of now, sanctions are in place in only one area of the country.

More than half the areas designated non-attainment by the 1990 Act now have air quality meeting the standard—many actually ahead of schedule. As a result of the state-federal partnership to clean the air, 40 million more people are breathing clean air today than were doing so just five years ago.

Anyway you want to look at it, this is real, measurable progress. The truth is that this government program is working. And in view of the flexible approaches EPA has adopted—for I/M, conformity, and other programs—we do not believe that sanctions are going to fall in any state that is making a legitimate effort to devise acceptable clean air programs.

Mr. Chairman, EPA is committed to flexible implementation of the Act to achieve the goal of clean air for every American. Thank you for the opportunity to testify. I would be happy to answer any questions that you may have.

Mr. MCINTOSH. Thank you, Mr. Laskowski. Before we get to Ms. Bozman I can't resist asking one question. Will you be able to provide Ms. Dunlop with the estimate of the credits that she needs for the various components?

Mr. LASKOWSKI. Yes, sir. I did make a note of that. If that has not been done we'll make sure that's done right away.

Mr. MCINTOSH. Thank you. We're not going to have time to question each of these witnesses, but let me ask Ms. Bozman to summarize her testimony and then we are going to have to get back for a vote on the Line Item Veto.

Ms. BOZMAN. You have my testimony and I won't repeat it all. I would like to speak just to the question of a 6-month moratorium. And to me, it's like trying to make one pattern fit all. I'm making a dress for my 3-year-old granddaughter and I can't use the same pattern I use to make a dress for my daughter nor, as a matter of fact, for myself.

And the moratorium, it seems to me, is just that. We have some regulatory relief coming from EPA in the mill now. The draft Interim Final Rule that was on their bulletin board a couple weeks ago, gives relief from the conformity regulations and will give 2 years to the business, of course, where transportation money is at risk if you are in a nonconforming State. But it will give 2 years relief from this.

That will not go forward if the moratorium goes forward. The moratorium would address 6 months, but not 2 years. We are much more interested in the relief that's coming and, as a matter of fact, in the preamble, to that EPA specifically states that the conformity sanctions should not be extended because of the difficulties encountered in the clean air planning efforts and recognizes that it's because of—there were a number of reasons, each of which is a result

or is the responsibility of EPA. And this is why they are proposing the 2-year extension.

I would like to say second that I honestly believe that when the efforts going forward now between Virginia and EPA once again if there is an agreement but there is a moratorium, nothing happens. It doesn't go ahead because the moratorium affects everything.

Now, our 15 percent plan relies heavily on the enhanced inspection and maintenance. Forty percent of the reduction, that is emissions, comes from I & M programs. If that could be reached it shouldn't be called off. This has to be in effect in 1996 and 1996 isn't that far away now.

So I would simply say—point out that the moratorium in these ways acts against the better interest of the localities in making clean air improvements which is what we are all after. Thank you.

[The prepared statement of Ms. Bozman follows:]

PREPARED STATEMENT OF ELLEN BOZMAN, VICE CHAIRMAN OF THE ARLINGTON COUNTY BOARD

Good morning. My name is Ellen Bozman, and I am pleased to appear before you today both as the Chair of the Metropolitan Washington Air Quality Committee (MWAQC) and as the Vice Chairman of the Arlington County Board. I would like to offer testimony on the impacts in Northern Virginia from the 6-month regulatory moratorium proposed under H.R. 450.

The Washington, DC metropolitan area presently is working diligently to remedy its ozone smog problem. Through regionally cooperative processes, the Metropolitan Washington Air Quality Committee and the National Capital Region Transportation Planning Board have approved air quality and transportation plans which will reduce emissions of ozone-forming compounds.

An important part of these cooperative planning processes is the Transportation Planning Board's finding that the region's transportation plan and programs are in "conformity" with the objectives and requirements of the region's air quality plan. A finding of conformity means that the projects in the transportation program may be built, while the sanction for a finding of non-conformity is the withholding of federal highway funds.

Recently the U.S. Environmental Protection Agency (EPA) released a draft of an Interim Final Rule amending the federal transportation conformity regulations. The draft Rule ensures that sanctions for findings of non-conformity would be imposed along the same calendar as the sanctions for findings that air quality plans do not meet federal Clean Air Act requirements. The draft Rule therefore ensures that transportation plan and program conformity findings, and more importantly transportation funds, are made more secure than at present.

In the draft Rule's Preamble, the EPA states that the conformity sanctions calendar should be extended because of the difficulties encountered in air quality planning efforts currently taking place throughout the country. The Preamble explicitly recognizes that for a number of reasons, each of which was or is EPA's responsibility, air quality plans are behind schedule. As a result, EPA intends in the Rule to grant a two-year extension of the conformity sanctions. That extension thereby effectively would grant not only the six months of relief sought under H.R. 450, but also an additional eighteen months.

However, if H.R. 450 does not exempt the Interim Final Rule, H.R. 450's retroactivity to November 9, 1994 would render the Rule's two-year extension null and void—at least until July 1, 1995—and conformity sanctions would become a live issue. Federal highway funds again would be at risk in Northern Virginia.

I recognize that H.R. 450 contains language of exclusion in Section 6 (3)(B), and that an exclusion under Section 6 (3)(B)(i) arguably could extend to cover the EPA's draft Interim Final Rule amending the transportation conformity regulations. Nonetheless, H.R. 450's lack of an explicit reference to that Interim Final Rule leaves the Rule's status under H.R. 450 open to a contest. It seems backwards to have an exception for every useful rule change, such as the draft Interim Final Rule. I would submit that the proposed moratorium would unnecessarily place transportation funds at risk.

Finally, I would like to recognize that Virginia currently is negotiating with the EPA on the requirements of Virginia's automobile emissions inspection and mainte-

nance program. The emissions inspection program is expected to provide 40% of Virginia's mandatory 15% reduction in emissions of ozone-forming compounds by 1996, and additional reductions thereafter. While Virginia remains committed to those reductions, it is seeking more flexibility in crafting its program to achieve those reductions. Because a more flexible approach to emissions inspection programs probably could be achieved only through a regulatory change, the 6-month moratorium would nunnecessarily put on hold the results of Virginia's negotiation wsns witht the EPA.

In conclusion, I believe that we are working cooperatively to meet the Clean Air Act standards adopted by the Congress. It is a difficult task which requires the flexibility to meet the new conditions and use new technologies. This can best be done without the imposition of a moratorium, which would stifle the new initiatives that can help all of us breathe easier.

Mr. MCINTOSH. Thank you. Thank you very much. Let me just mention a couple things about the moratorium so that you will rest assured. One, it doesn't reverse any existing regulations; it simply puts new regulations on hold. And the other is there is some flexibility for regulations that help relieve a burden.

And I understand there are differences of opinion on it, but we are trying to build in flexibility. And I appreciate the comments of the panel on that and we will look at those seriously as we consider that legislation.

So thank you for coming today and thank all of the audience for being here with us and best wishes to everyone.

[Whereupon, at 10:40 a.m., the meeting was adjourned, subject to the call of the Chair.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF HON. JOHN M. SPRATT, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Thank you, Mr. Chairman, for the opportunity to make this statement to the committee.

I would like to express a few concerns with the way in which inspection and maintenance programs for automobiles required under the Clean Air Act are being administered by the Environmental Protection Agency. In 1992, EPA published its rule establishing the performance standards and other requirements states needed to meet in designing inspection and maintenance programs. In this rule, EPA stated its intention to ensure that, "States have flexibility to design their own programs if they can show that their program is as effective as the 'model' program used in the performance standard."

This is a laudable intention, Mr. Chairman, and is precisely in line with Congress' intent when it passed the Clean Air Act Amendments of 1990. Unfortunately, this good intention has flagged as the program has been implemented. EPA's review of state implementation plans, so-called SIPs, has led many states to feel that they have no real room to maneuver in meeting EPA's standard, effectively denying them the flexibility to deviate from EPA's model.

I believe that EPA should revisit its handling of SIPs using the following guidelines, guidelines fully in accord with Congressional intent expressed in the 1990 amendments.

(1) EPA's enhanced inspection and maintenance program for automobiles should be structured to provide states with maximum program flexibility.

(2) EPA should allow states flexibility in designing programs tailored to the political and financial realities of their communities, without sacrificing the overall goals or reduction requirements of the 1990 amendments.

(3) EPA should evaluate SIPs strictly on their demonstrated ability to meet its performance standard, and

(4) EPA, where practical, should provide extensions of time requirements to accommodate delays caused by EPA's redefinition of the program before initiating any sanctions against state programs.

These guidelines ensure that both EPA and Congressional original intent for inspection and maintenance programs is implemented.

I was encouraged by Administrator Browner's recent decision to allow more flexibility in the program, and look forward to working with her, EPA, and this committee to that end.

PREPARED STATEMENT OF HON. JAMES P. MORAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman: I want to thank you for holding this hearing today. I know that as chairman of the subcommittee on Economic Growth, Natural Resources and Regulatory Affairs, you have a keen interest in the effect of the implementation of the Clean Air Act amendments on state governments and small businesses.

In 1990, Congress passed the Clean Air Act Amendments. It was an historic moment, and much lauded because it was a very significant, broad piece of legislation that had garnered bipartisan support. It was signed into law by President Bush. This ambitious bill's ultimate goal was to reduce the amount of pollution in the air by reducing sources of pollution, including automobile emissions. It did not include prescriptive remedies about how to achieve reduction, but instead left it to EPA to formulate rules (in accordance with those outlined in the bill) to help achieve the reduction targets that Congress set. The bill further directed the EPA to choose regulations which would least burden the states, and ultimately, the consumer.

Now, five years later, Virginia is one of eight states balking at the price tag and inconvenience of EPA's regulations under the Clean Air Act. In particular, there is widespread concern about the costly $110,000 IM/240 testing devices required by EPA to inspect cars for auto emissions, and the necessity for creating a centralized, bureaucratic testing system. In addition, after three draft plans and three quick rejections, the Commonwealth has yet to tailor a plan for emissions reductions that meets with EPA approval. Faced with the threat to cut off highway funds and frustrated with a lack of cooperation by EPA to meet the necessary emissions reductions, Governor Allen filed suit, pending in District Court, challenging EPA's authority to force Virginians to comply with costly mandatory rules on the way their cars and trucks meet the standards of the 1990 Clean Air Act amendments.

In short, despite the fact that all of us support the goal of clean air, over the last several months of negotiation, meetings, and correspondence—we are no closer to finding a common solution. Federal law still requires that the Commonwealth reduce emissions of volatile organic compounds by 15 percent by 1996. The target for the Northern Virginia area is an emissions reduction of 60 tons per day. Yet, we have no plan, no blueprint, and no guidance from EPA about how we can meet that goal.

Just two days ago, Congress passed unanimously an amendment, one that I offered, to the Unfunded Mandates bill (H.R. 5). This amendment allows states to pursue alternative approaches to agency regulations, as long as the state demonstrates that the alternative they prefer will accomplish the objective sought by the agency's proposal with less cost. Although this amendment is prospective in nature, it sends a clear signal that Congress wants the federal government to work with the states in meeting regulatory objectives, not dictate the Agency selected solution.

Today, I hope we can begin a dialogue on how to achieve reductions in emissions in a realistic, cost effective, consumer friendly manner. In a meeting on December 9 with a bipartisan group of seven governors, Administrator Carol Browner indicated the agency would no longer insist on imposing stringent auto emissions testing procedures on the states. We hope that she can make good on that promise, and I hope those representatives of EPA here today can tell us the best way to accomplish our mutual goals.

Thank you again Mr. Chairman for holding this hearing today and inviting me to participate. I look forward to hearing the testimony of our distinguished guests.

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